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1 SACRAMENTO, CALIFORNIA, SEPTEMBER 22, 1999 - 10:00 A.M.

2 * * * * *

3 CHAIRMAN EATON: Good morning, everyone,
4 and welcome to the second day of the September 21st-22nd
5 California Integrated Waste Management Board meeting.
6 Today we have six items on the agenda, but before we do
7 so, the Secretary will reestablish a quorum.

8 Madam Secretary, please call the roll.

9 BOARD SECRETARY: Board Members Jones.

10 BOARD MEMBER JONES: Here.

11 BOARD SECRETARY: Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: Here.

13 BOARD SECRETARY: Roberti.

14 BOARD MEMBER ROBERTI: Here.

15 BOARD SECRETARY: Pennington.

16 BOARD MEMBER PENNINGTON: Here.

17 BOARD SECRETARY: Chairman Eaton.

18 CHAIRMAN EATON: Here.

19 Quorum has been established.

20 Before we go to individual Members' ex

21 parte communications, as I had done yesterday and will do

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22 today, a number of letters we have received subsequent to
23 our ex parte disclosures yesterday. Members, if you'll
24 just listen and I will read them into the record, and at
25 the appropriate time that you're called upon to disclose

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1 any, if any, ex parte communications, if you have received

2 any of these letters, simply say, "The same letters that

3 the Chairman read off."

4 The first letter is from Larry Nurokomi

5 from Larry Nurokomi Contracting regarding C&D regulations;

6 John Robertson from Chandler Sand and Gravel, also

7 regarding C&D regs; Linda Falasco from CMAC regarding C&D

8 regs; Miguel Vasquez, individual, regarding Lionudakis

9 Composting Facility; Joseph Clark regarding ADC; and

10 Patricia Shanks from the law firm of McCutcheon, Doyle,

11 Brown and Anderson, also regarding C&D regs.

12 With that, Mr. Pennington, any other ex

13 parte communications to report?

14 BOARD MEMBER PENNINGTON: Mr. Chairman, I

15 have no additional. I have the ones that you called off.

16 CHAIRMAN EATON: Thank you.

17 Mr. Jones.

18 BOARD MEMBER JONES: Miguel Vasquez on the

19 Lionudakis, Ken Stoddard and Chuck White on captives,

20 Yvonne Hunter on AB 939 enforcement yesterday, Evan Edgar

21 and Michael Gross and Matt Cotton on compost.

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22 CHAIRMAN EATON: Okay.

23 Ms. Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: Thank you,

25 Mr. Chair. Laurie Hanson said hello to me and introduced

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1 herself to me, and George Larson and Evan Edgar introduced
2 himself to me.

3 Thank you.

4 CHAIRMAN EATON: Senator Roberti.

5 BOARD MEMBER ROBERTI: No ex partes over
6 and above about the 50 I just signed about five minutes
7 ago.

8 CHAIRMAN EATON: All right.

9 BOARD MEMBER PENNINGTON: Mr. Chairman, if
10 you'll excuse me.

11 CHAIRMAN EATON: Sure. Mr. Pennington.

12 BOARD MEMBER PENNINGTON: I forgot to
13 mention I did speak with Chuck White yesterday afternoon
14 on captive insurance.

15 CHAIRMAN EATON: All right. Ladies and
16 gentlemen, sorry for the delay, but to those of you who
17 haven't heard, the Oxford tire pile has gone up in flames.
18 Various reports have been circulating around, so I thought
19 it would be beneficial -- normally on the second day
20 there's not much to report from the Executive Director.

21 So Mr. Chandler, if you'll kindly give a

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22 short update before we begin our regular business, it

23 would be greatly appreciated from both the public

24 perspective and the Board Members.

25 MR. CHANDLER: Mr. Chairman, I will be

1 brief, but for those in the audience and to those Members
2 that have just arrived and I have not had a chance to
3 speak directly to, correct, we did get the report that
4 early this morning, being attributed to lightning strikes,
5 although we will investigate that, that the Oxford tire
6 pile, now known as the Filbin tire pile on Neman Road west
7 of California is nearly fully engulfed in flames. The
8 latest assessment that I got, that apparently eight
9 percent of the pile is now potentially engulfed and that
10 the energy plant, however, is at this time not impacted by
11 the fire.

12 CDF is on the scene with a number of other
13 emergency response teams including the Stanislaus County
14 Fire Department. Fire breaks have been set and back fires
15 have been set to try to save the energy plant.

16 I will be leaving you at 11:30. There will
17 be a press conference upstairs. Numerous press calls have
18 come in and we've invited the press, with this Board's
19 Cleanup and Abatement Order that was issued last week, my
20 letter to Richard Dycer of September 13th, expressing our
21 concerns again that no fire suppression equipment was on

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22 site, and the 1990 consent judgment against the Filbins,

23 requiring the reduction of the size of the tire pile.

24 So a sad day for the Board. Obviously

25 we've put many hours and millions of dollars into trying

1 to address this site, and I'm particularly disappointed

2 that we now have the fire situation on our hands.

3 But that's the latest, and if I get any

4 more information, I'll certainly provide the Board with

5 the latest updates.

6 CHAIRMAN EATON: Thank you. All right.

7 We have a couple of items that were

8 continuation items that we'll begin with. Before I begin,

9 if I could also remind individuals that we have a number

10 of speakers who want to speak on the first item, which is

11 Item A, which is the Lionudakis Wood and Green Waste

12 Recycling and Compost Facility. If you would kindly keep

13 your comments pertinent to the permit as well as try not

14 to repeat what the previous speaker may have said, unless

15 you disagree with that speaker, and if you could just

16 kindly explain the reasons for the disagreement. And

17 that would be helpful. Even though it looks like we have

18 a small agenda, the items that are on the agenda are quite

19 long from the perspective in terms of complexity and

20 deliberation.

21 So without any further adieu, Item A

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22 scheduled, the compost permit for Lionudakis Wood and

23 Green Waste Recycling and Compost Facility.

24 Ms. Nauman.

25 MS. NAUMAN: Mr. Chairman, Members, Julie

1 Nauman, Deputy Director of the Permitting and Enforcement
2 Division. Jon Whitehill of our staff will be making the
3 presentation this morning, and Jim Cermak from Sacramento
4 County is also present.

5 MR. WHITEHILL: Good morning, Chairman
6 Eaton, Members of the Board. Again, for the record my
7 name is Jon Whitehill of the Board's Permitting and
8 Inspection Branch.

9 This item is for the consideration of a
10 standardized compost permit for Lionudakis Wood and Green
11 Waste Recycling and Compost facility. This facility is
12 located in Sacramento County, about five miles southeast
13 of our offices here, near the intersections of Jackson
14 Road and Mayhew Road. The 30-acre compost area is 30 feet
15 below grade in a former gravel quarry. Although adjacent
16 land use is zoned agricultural or industrial, there are
17 several residences within a half mile of the site. One of
18 the neighborhoods of eight residences is approximately a
19 quarter mile west of the facility boundary on Newton Drive
20 near Fruitridge Road.

21 The operator uses the windrow method to

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22 compost municipal and yard waste such as grass clippings,
23 tree trimmings and leaves. This facility is not open to
24 the general public as most of the material is collected
25 and delivered by county vehicles as part of the County's

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1 curbside green waste collection program which picks up
2 cans of green waste from residences every other week.

3 The LEA issued a registration permit for
4 this facility in July of this year. The registration
5 permit allows a maximum of 10,000 cubic yards of compost
6 and feed stock material on-site at any one time. A
7 registration permit does not require Board concurrence but
8 is issued by the LEA once the application is deemed
9 complete.

10 The operator has since applied for a
11 standardized permit which would allow up to 100,000 cubic
12 yards of compost and feed stock material on-site at any
13 one time. The applicant is not asking for an increase in
14 the daily tonnage of incoming material, which is limited
15 by the county use permit at an average of 350 tons per
16 day. If the standardized permit were denied today, the
17 facility could continue to operate under the current
18 registration permit.

19 The Board has 30 days to consider a
20 standardized permit, and because agenda items are
21 typically prepared 30 days prior to a Board meeting, the

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22 staff report did not contain a review of the proposed
23 permit nor recommendation. We have since reviewed the
24 proposed permit and have information on the following
25 required findings: Conformance with the County Integrated

1 Waste Management Plan, compliance with the California
2 Environmental Quality Act, and consistency with state
3 minimum standards for compost facilities and operations
4 including odors.

5 First the County's Integrated Waste
6 Management Plan. The Board approved the County's Waste
7 Management Plan on May 27th, 1998, and this proposed
8 project is described in the non-disposal facility element
9 of the Waste Management Plan as the Good Earth Brand Soil
10 Center. The NDFE and the proposed permit use different
11 units of measurement. One uses tons per day, the other
12 uses cubic yards on-site, and therefore, the Board's
13 Office of Local Assistance was unable to make the finding
14 that the permit is specifically consistent with the NDFE.

15 Second is the CEQA document. The County of
16 Sacramento, which is a lead agency for CEQA, prepared an
17 initial study and negative declaration for the project,
18 and Board staff commented on the negative declaration on
19 July 1st, 1996. The County of Sacramento Project Planning
20 Commission accepted the negative declaration and adopted
21 the mitigation monitoring and reporting program on July

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22 22nd, 1996.

23 Some nearby residents of the project have

24 complained that they were not notified that this facility

25 was being proposed in the area and that they did not get a

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1 chance to comment on the negative declaration prepared
2 during the 1996 CEQA process. I have checked into that,
3 and it's my understanding that County Planning Department
4 required -- or notified all property owners within 500
5 feet of the facility. However, as I mentioned earlier,
6 one of the neighborhoods where the LEA has received odor
7 complaints is located approximately 1200 feet west of the
8 facility boundary, and this seems to -- however, the
9 500-foot notification seems to technically comply with the
10 minimum notification requirements of the California
11 Environmental Quality Act.

12 The daily tonnage feed stock and the
13 described use of the site are consistent with the negative
14 declaration which addresses the potential noise, odor,
15 vector, traffic nuisance, air quality, and water quality
16 impacts of the site. However, although the County has
17 always apparently picked up green material on a biweekly
18 schedule since 1996, at the time that the negative
19 declaration was prepared, the County was considering a
20 weekly pickup of curbside green material. However, the
21 county green waste collection program that was a separate

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22 project and is neither under the operator's control nor

23 the jurisdiction of the LEA, is part of this permit

24 action.

25 Third, state minimum standards, state

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1 minimum operating standards. Operators of compost
2 facilities are required to ensure that all composting
3 activities are conducted in a manner that minimized odor
4 impacts. The LEA received four odor complaints between
5 August 9th and August 12th of this year from residents at
6 the Rosemont area, north of the site. LEA also received
7 three odor complaints on August 19th from residents of the
8 Newton Drive area, which as I mentioned is 1200 feet west
9 of the site.

10 The LEA was able to confirm that all seven
11 complaints were likely a result of one large stockpile of
12 green waste which had been stored too long before being
13 processed into windrows. The LEA has not been able to
14 confirm any complaints since August 19th. However, some
15 complaints were received during a September 14th meeting
16 with neighbors at the site. The complaints ranged from
17 telling us that it smells bad all the time, or that they
18 don't smell it from their home anymore but they smell an
19 odor when driving on Jackson or Bradshaw, or that they
20 smell an odor at night at that facility. And as you
21 probably know, some of the neighbors are here and will

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22 probably give you an update on conditions in their

23 neighborhood.

24 I also received phone calls yesterday from

25 three nearby residents who were not able to be here today.

15

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1 Janice Wesie and Lorraine Picolais (phonetic) asked me to
2 relay their objections to the permit because of foul
3 odors, especially in the evenings and at night. Alisa
4 Menchaca also called and followed up with a letter which
5 has forwarded to Board Members and entered into the
6 record.

7 The LEA has diligently followed up on all
8 odor complaints, reporting and mapping each complaint and
9 visiting the site nearly every day since the initial
10 complaints were received and making sure that the operator
11 is responding to complaints and improving operations as
12 necessary.

13 Again, the state standard states that all
14 composting activities shall be conducted in a manner that
15 minimizes odor and nuisance impacts. The operator
16 currently takes the following steps to minimize odor
17 impacts at the facility: All incoming material on
18 composted windrows are now sprayed with an odor
19 neutralizing agent; incoming material is processed within
20 48 hours of delivery and immediately placed in windrows
21 and also sprayed with an odor neutralizing agent;

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22 temperatures are monitored and recorded daily to ensure
23 that there's an aerobic process taking place; and active
24 windrows are now turned nearly daily with a new windrow
25 turning machine that was delivered to the site on

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1 September 1st.

2 In addition, the operator has ordered a
3 backup turner and has available other backup equipment
4 from nearby facilities. Site attendants monitor and
5 record wind speed and direction at the facility. The
6 operator has adjusted and improved odor control methods in
7 processing procedures in response to recent odor
8 complaints. The operator met with neighbors on September
9 14th to discuss odor issues and has scheduled a follow-up
10 meeting with neighbors for October 14th. The operator has
11 submitted to the LEA an emergency green waste removal
12 plan.

13 Also, the joint LEA board inspection noted
14 some violations of record keeping requirements, but the
15 record keeping has since been improved to meet or beat
16 state standards, and the inspection also noted that the
17 volume of material has now exceeded the permitted volume
18 that was allowed by the registration permit issued in
19 July.

20 In summary, the LEA and Board staff have
21 reviewed the proposed permit and supporting documentation

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22 and made the following findings: That the lead agency has
23 complied with the requirements of CEQA and the proposed
24 permit is consistent with the adopted negative
25 declaration; the design and operation is currently in

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1 compliance with the state minimum operating standards for
2 compost facilities; the facility is consistent with the
3 intent of the County's Integrated Waste Management Plan;
4 and the permit is consistent with other standards adopted
5 by the Board; also, staff trusts that the operator will
6 continue to make improvements in response to neighborhood
7 input, and if not, staff trusts that the LEA will take
8 appropriate enforcement actions at this facility.

9 In conclusion, staff recommend that the
10 Board adopt Resolution 99-480, concurring in the issuance
11 of Standardized Compost Permit Number 34-AA-0200.

12 That concludes my presentation. The LEA
13 and operator are here to answer questions, and the public
14 also.

15 CHAIRMAN EATON: Before I ask any Members,
16 for those of you who may be here for the first time, I was
17 remiss in failing to remind each other on the second day
18 there are these white slips in the back of the room. If
19 you desire to speak on any issue, if you'll kindly fill
20 them out and bring them up here, we'll make sure you get
21 on. Appreciate It.

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22 Members, any questions of staff or

23 Mr. Cermak from the County? Okay.

24 We have a number of speaker slips. I'm

25 going to start with the proponents' public testimony, and

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1 to begin with, Evan Edgar, Loren Jessop, and Doug Kobel.

2 Any particular order you want to go in, I'll leave that up

3 to the three of you.

4 MR. EDGAR: Hello. Evan Edgar, Edgar and

5 Associates, on behalf of Phil Lionudakis. I'm here to

6 represent and promote this compost facility.

7 First of all, I want to talk about the

8 sizing of the facility, the capacity, and a little

9 history, and then turn it over to Doug Kobel of Total

10 Compliance Management. He's the engineer of record for

11 the site. And we have Loren Jessop in the crowd who is

12 the operations manager, as well as, if necessary, John

13 Febbo from the County of Sacramento with regards to the

14 collection issue, who is here today to talk about the

15 frequency and what issues they're going to be doing at

16 rinsing out the trucks, the collection trucks.

17 First of all, this permit is for about a

18 thousand cubic yards a day at the gate. There is no more

19 gate tonnage that is being promoted here than is already

20 approved in the CUP. It takes about a hundred days to

21 compost. So you take a thousand cubic yards a day, 100

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22 days, that's a hundred thousand cubic yards. So this
23 permit does nothing with regards to adding additional
24 tonnage across the gate. What it does is it allows the
25 operator to take additional compost in from another zone

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1 to store it a little longer in order to have a full

2 compost process.

3 Mr. Lionudakis historically has been

4 another site in Sacramento called Outfall Circle. That

5 site was a chip and ship facility --

6 BOARD MEMBER ROBERTI: Mr. Edgar, my staff

7 has tried to explain this to me, too, and I'm still at a

8 loss. How can you not take in more at the gate if you're

9 going to be stockpiling more on-site?

10 MR. EDGAR: Good question. At the gate,

11 the conditional use permit allows about a thousand cubic

12 yards per day and that's what crosses the gate, but in

13 order to have -- make a full compost as to opposed a clean

14 green mulch or alternative daily cover, other people make

15 that type of product which is a lower value product, but

16 when you have a value product, it takes about a hundred

17 days in order to make the quality compost product. So if

18 you have a thousand cubic yards at the gate each and every

19 day and then you store it for a hundred days in order to

20 make the compost, that's 100,000 cubic yards. And the

21 original intent of this plan for the Lionudakis business

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22 plan was to move beyond just making a mulch but moving to

23 a valued compost.

24 BOARD MEMBER ROBERTI: So earlier what the

25 site was doing was making a -- more aptly be making mulch

20

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1 than compost?

2 MR. EDGAR: Correct, Senator. The other
3 facility out of town, which is Outfall Circle south of
4 town, at that facility they were making a mulch, a clean,
5 green product to be shipped down to a permitted facility
6 in Stockton and over in -- Hyponex. Those markets are
7 still available and he's still hauling some material down
8 there as a backup plan. If there's too much storage going
9 on, he always has those other outlets.

10 But as part of the permitted compost
11 facility, instead of the haul cost all the way down to
12 Stockton, Mr. Lionudakis decided to have a compost
13 facility in the Sacramento County area to service
14 Sacramento's AB 939 needs.

15 BOARD MEMBER ROBERTI: Why in the original
16 permit wasn't the request made for a larger -- for
17 essentially this larger on-site if the original intent was
18 to create a composting facility rather than a mulching
19 facility?

20 MR. EDGAR: Good question, Senator. The
21 original CUP did cover that back in 1995 and 1996. The

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22 whole intent was to have a compost facility in this
23 abandoned mine area due to the restoration with a compost
24 facility. So the original intent of the CUP and the
25 negative dec was to do a full compost.

21

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1 He took the site over in July and August
2 and has been upgrading ever since with a lot of
3 infrastructure improvements in order to manage the compost
4 facility. In order to get started with the LEA and to get
5 started with a new zone in Sacramento County coming
6 online, we went in with a registration permit, which is a
7 10,000 cubic yard site, just to get started in order to
8 address the new zone that was being addressed. The whole
9 intention of the compost operator was to come back later
10 with a standardized permit as part of a phase development
11 plan in accordance with the original CUP and the negative
12 declaration that was approved after 1995 and '96 and to
13 change his operation from a mulching operation into a
14 compost operation.

15 BOARD MEMBER ROBERTI: So it's safe to say
16 the reason for this request is in order to allow what is
17 essentially a mulching operation now to become a
18 composting operation and to develop, in your words, a
19 higher quality product.

20 MR. EDGAR: Exactly, and to move to a new
21 location. He was an undersized location at Outfall

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22 Circle. He moved over in July to consolidate his
23 operation in order to have the space and area needed
24 within the conditional use permit in order to do this very
25 project.

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1 BOARD MEMBER ROBERTI: Okay.

2 MR. EDGAR: Thank you.

3 MR. CERMAK: Can I add something?

4 CHAIRMAN EATON: Mr. Cermak.

5 MR. CERMAK: Jim Cermak with the LEA.

6 Going back through the records, our first

7 meeting with Mr. Lionudakis was in May when he presented

8 to us his proposal, and his initial proposal was to go for

9 a full Solid Waste Facility Permit for a composting

10 facility at this site, so we were alerted to this back in

11 May. And because of what Mr. Edgar said, because of the

12 County contracts, they opened up another zone, his

13 particular facility on Outfall Circle, which was a chip

14 and ship facility. He didn't have enough capacity there,

15 so he had to move to the Mayhew facility and he was going

16 to start with the registration permit, but right from the

17 beginning, he had indicated to us his intent was to get a

18 full composting permit at that facility.

19 MR. EDGAR: Thank you.

20 CHAIRMAN EATON: Continue, Mr. Edgar.

21 MR. EDGAR: Doug Kobel has been our site

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22 engineer, and he'll give a little history and some support

23 letters from neighbors and operational background.

24 MR. KOBEL: Good morning, Mr. Chairman and

25 Members of the Board. My name is Doug Kobel with Total

23

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1 Compliance Management. I represent Mr. Phil Lionudakis on
2 this item.

3 I would like to briefly go over some of the
4 key points that Mr. Jon Whitehill brought up. The
5 increase in the volume, as Mr. Edgar alluded to,
6 Mr. Roberti, was fully Intended to allow Mr. Lionudakis to
7 compost the entire feed stock material coming from the
8 Sacramento County green waste collection program, thereby
9 avoiding having that material go to lesser uses, as
10 Mr. Edgar had indicated, such as ADC or mulch.

11 The -- another item that he had touched on
12 was the notice of negative declaration and the 500 feet.
13 The neighbors, we seem -- they should be right around 1200
14 to 2,000 feet away from the site, so yes, they were not
15 notified of this pursuant to the state regulations for
16 noticing.

17 In regards to odors, the operator has made
18 extensive efforts to keep in contact with the residents in
19 the local neighborhood area.

20 AUDIENCE MEMBER: Not even.

21 CHAIRMAN EATON: Excuse me. If you could

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22 just be courteous to the speaker, it would be greatly
23 appreciated. It also not only affects courtesy, but we
24 have a court reporter here, and any kind of unnecessary
25 noise also prohibits her ability to have an accurate

24

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1 record. So if you would kindly wait until your time, it
2 would be greatly appreciated.

3 BOARD MEMBER ROBERTI: Could you repeat
4 your statement? I kind of missed it.

5 MR. KOBEL: Yes. As far as the odors were
6 concerned, Mr. Lionudakis has made extensive efforts to
7 keep in contact with the local residents who may be
8 impacted by the odors that were initially found at the
9 site during the startup operations.

10 CHAIRMAN EATON: Ms. Moulton-Patterson.

11 BOARD MEMBER MOULTON-PATTERSON: I'm sorry.
12 I just have a clarification. Did you say the neighbors
13 were not formally noticed?

14 MR. KOBEL: They were not noticed in the
15 1996. Outside the 500-foot perimeter were not noticed
16 during the 1996 CUP hearings.

17 BOARD MEMBER MOULTON-PATTERSON: Thank you.

18 CHAIRMAN EATON: We have a rule against
19 acronyms.

20 MR. KOBEL: I'm sorry.

21 CHAIRMAN EATON: We know what it is, but

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22 for the record.

23 MR. KOBEL: Thank you. To continue with

24 the odor concerns, Mr. Lionudakis was in contact with

25 specific residents at the site right from the beginning

25

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1 when one of the neighbors actually came to the site to
2 express his concern. This was in early July, and when
3 that neighbor came to the site, saw the site, he saw the
4 infrastructure that Mr. Lionudakis had put into the
5 facility at that point in time, realized -- and this is in
6 his words, and there is a letter in that package that you
7 have been handed from Mr. Sands, James Sands, this letter
8 here, where he comments that yes, there was problems early
9 on, but that now, two months later, in his own words, "The
10 odor has been cut down over 90 percent of what it was
11 around the first of July. The owner has done what he said
12 he would do and has gone a long way to help out the people
13 in the area."

14 There are several other letters in here.
15 Another one that is a key one is a neighbor that is
16 directly to the north of the facility. She actually sits
17 basically almost on top of the facility, and her name is
18 Lucy Barmby, and if anybody is going to be impacted by the
19 odors, she certainly would be one that would be
20 significantly impacted by this being in such close
21 proximity. She states that she also found there to be a

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22 problem early on, but that the odors were reduced and she
23 has no complaints at this time. She said, as a matter of
24 fact in her own words, "The problem has diminished greatly
25 and I have no complaints. I support Phil's operation."

26

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1 This is a residence right there.

2 You do have this in the packet. You also
3 have a map that precedes the notes, and it's the second
4 page, the first page after the cover, and that shows the
5 location of each of these letters that are attached so you
6 can get an idea as to exactly where these people are in
7 relation to the facility.

8 Another item that Mr. Whitehill brought up
9 was in the windrow turners. Mr. Lionudakis has gone to
10 great expense to purchase brand-new windrow turners. The
11 first one arrived on September 1st and began turning
12 immediately. Prior to that, Mr. Lionudakis was turning
13 with loaders and with what they call a "rake." It's a big
14 fork that you put on the front of a bucket, on the front
15 of a tractor to turn the windrows. Mr. Lionudakis's
16 second windrow turner is on the road as we speak and
17 should be here within the next couple of days.

18 There have also been contingency plans set
19 up with the City of Sacramento to rent their windrow
20 turner, and as a matter of fact, they're in the process of
21 bringing that one on-site as well to have another backup

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22 until that second one Mr. Lionudakis purchased does arrive

23 on the site.

24 Mr. Whitehill commented on the meeting that

25 we had with the residents on September 14th. Many of

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1 those residents are here today, or several of them are
2 here today, that will be speaking to you as well. During
3 that meeting, which was called by Mr. Lionudakis to
4 address any of the concerns that the residents may have
5 had for the facility, in my opinion the meeting was
6 positive. We let the residents know of all the mitigation
7 measures we are taking, the odor neutralizers that we are
8 implementing in order to try to resolve the significant --
9 the odor impact that was perceived in early July.

10 As the letters that I referenced to you
11 earlier stated, there has been a significant decrease in
12 the odor. As Mr. Cermak commented, the odor complaints
13 have also reduced significantly, as he commented.

14 That is my presentation, and I would be
15 happy to answer any questions.

16 CHAIRMAN EATON: Since you mention the
17 conditional use permit, what is the requirement in terms
18 of distance from residences within the permit?

19 MR. KOBEL: According to County Planning,
20 it's 500 feet, any landowner within 500 feet.

21 CHAIRMAN EATON: Okay.

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22 MR. EDGAR: Evan Edgar, Edgar and
23 Associates. That's 500 feet for noticing. In the state
24 of California, there are no buffer zones for landfills or
25 compost facilities statewide. The only thing that is

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1 within state law is 1200 feet for hazardous waste
2 facilities. You have to have some type of buffer zone for
3 sensitive land uses. That's the only known buffer zone
4 throughout the state of California.

5 CHAIRMAN EATON: Thank you.

6 BOARD MEMBER PENNINGTON: Mr. Chairman.

7 CHAIRMAN EATON: Mr. Pennington.

8 BOARD MEMBER PENNINGTON: I'm just curious.

9 You did meet with these people, but then you used the law
10 saying that it only was 500 feet and you didn't notice
11 them about the hearings. It would seem that if you were
12 concerned enough to talk to them, that you would have
13 notified them.

14 MR. EDGAR: The hearings for the
15 conditional use permit were back in 1995 and 1996. At
16 that time, within 500 feet following the County planning
17 process, that occurred. But since that time with the
18 startup operation in July and August, Lionudakis did reach
19 out to the people who were complaining outside the 500
20 feet, and that map provides some of the people he has
21 spoken to.

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22 With respect to today's hearing, I think
23 that was on the press about -- in the media about three or
24 four weeks ago, the market zone for Channel 3 goes all the
25 way from Plumas County down to Modesto and a lot of

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1 overmilling people heard that media on the news and since
2 that time we didn't have a firestone of complaints. As a
3 matter of fact, very few people have phoned in since that
4 time.

5 There has been an extended reach out to
6 different people in the community. In fact, we met with a
7 school district, in the letters in the package there, with
8 respect to having school tours with respect to working
9 with school districts on some compost implementation
10 program, and there's some tentative support there, some
11 initial support to work with the school district that
12 would be in that region.

13 So there has been extended effort by the
14 operator to inform and work with the public prior to
15 today's hearing.

16 BOARD MEMBER JONES: Mr. Chairman.

17 CHAIRMAN EATON: Mr. Jones.

18 BOARD MEMBER JONES: The original CUP was
19 not by the operator. It was, in fact, by Dave Vaccarezza.

20 MR. EDGAR: Correct. Back in 1995 and
21 1996 the CUP was for another operator.

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22 BOARD MEMBER JONES: And they never went
23 forward with the project or whatever. Did they go forward
24 with that project?

25 MR. KOBEL: No, they did not, because the

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1 compost facility was basically to be there for Zone 1 of
2 the three zones for Sacramento County. The CUP was not
3 initiated at that stage. And to elaborate a little bit
4 further on the 10,000 to 100,000 cubic yards and getting
5 the registration to you first, the CUP permit was going to
6 be -- excuse me. The conditional use permit was to be
7 expired on July 22nd, so it was necessary also to trigger
8 the CUP prior to its expiration. So that's hence why we
9 applied for the registration tier permit, to get the
10 facility operating, and as has been stated, the full
11 intent all along was to go to a standardized permit.

12 BOARD MEMBER JONES: And I think that's
13 important, that the original CUP was with another operator
14 that probably didn't get the contracts, and to activate --
15 to be able to get in within that, usually there are
16 three-year windows that you can operate in. I don't know
17 what this one was, but to start the operation.

18 MR. KOBEL: That's correct.

19 BOARD MEMBER JONES: Okay.

20 MR. KOBEL: And Mr. Lionudakis has gone
21 through extensive efforts to go outside that 500-foot

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22 notice.

23 BOARD MEMBER JONES: Understood. And I

24 think that's important.

25 CHAIRMAN EATON: Senator Roberti.

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1 BOARD MEMBER ROBERTI: Mr. Chairman, in
2 hearing this, we have a 500-foot notice requirement, but I
3 understand it's a County notice requirement. And maybe I
4 would like to hear from the opposition, but I tend to
5 think there's not much we can do about a County notice
6 requirement. In my mind, a 500-foot notice requirement on
7 a composting facility is utterly incredible, but if the
8 Board of Supervisors wants to do that to its voters, that
9 is not our jurisdiction, and I think you should take it up
10 with your supervisor because I don't know of any other
11 County which would ever dream of permitting such a thing.

12 I have one within two miles of my house a
13 composting facility, which we affectionately know as "zoo
14 doo," the L.A. Zoo.

15 (Laughter)

16 BOARD MEMBER ROBERTI: And no one in the
17 neighborhood would want that within 500 feet, and it's
18 pretty well run. So I think composting is terribly
19 important. I think everybody recognizes that, but I would
20 like to hear from the opposition because I think maybe,
21 without hearing you yet, your quarrel is with your own

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22 county, which I think has given a very, very lax zone of

23 notice. Why not even notify people and fight it out

24 there. I don't think they want to have the agony.

25 But what we can do within the parameters of

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1 state regulations, it may be more limited. I want to

2 throw that out, and interject it, and we'll talk about it.

3 CHAIRMAN EATON: Thank you. Mr. Jessop, do

4 you want to say anything or save until response time, or

5 anything to add before we get to the opponents?

6 MR. JESSOP: Just basically here to answer

7 questions concerning the operation.

8 CHAIRMAN EATON: Great. Thank you. All

9 right.

10 What has been marked on the slips, and I

11 will call them opponents, if that is not correct, when you

12 get to the microphone, if you could just say that you're

13 in support or opposition when I call your name. It looks

14 like you've all filled out the opposition slip.

15 Ms. Colleen O'Brien. Is she here?

16 MS. O'BRIEN: Did you say we could come up

17 and speak?

18 CHAIRMAN EATON: Absolutely.

19 MS. O'BRIEN: I am in opposition --

20 CHAIRMAN EATON: If you could wait until

21 you get to the microphone and kindly state your name for

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22 the record.

23 MS. O'BRIEN: Colleen O'Brien, and I'm in

24 opposition.

25 CHAIRMAN EATON: Thank you.

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1 MS. O'BRIEN: Thank you, Senator Roberti,
2 for your comment about the 500 feet from the plant, that
3 is my opinion, that that -- for people who live even
4 within a quarter of a mile of the plant, which I do, when
5 we hear from 500 feet is all that's required for this type
6 of a business to go into operation in our living area,
7 it's just hard to accept.

8 I -- about early in July, I believe this
9 was, could have even been the latter part of June,
10 starting noticing this smell, my eyes were burning, I have
11 a sore throat that still hasn't gone away, on and off.
12 Headaches, a lot of physical complaints I was having, and
13 also being awakened in the middle of the night with this
14 smell that would come in through my windows.

15 I decided to go out in the neighborhood and
16 look around and see where this smell was coming from, and
17 as I did, I noticed the Lionudakis Green Waste Recycling
18 plant, and I could smell the same smell that was at my
19 house in -- actually permeated the inside of my living
20 quarters so that my clothes all smell of this, my carpet
21 smells of it. Even in the daytime when the smell may

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22 dissipate, then I walk into my house and I can smell this

23 green waste recycling. It's a heavy smell. It's very

24 difficult to take a breath, even to take a deep breath.

25 You can breathe little short breaths, but to really inhale

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1 it makes you want to gag.

2 I could go on about that, but I want to say

3 that this smell, I've been tracing it and I've been

4 keeping a record. And I was just -- a little over a week

5 ago, about two weeks ago, I contacted -- finally contacted

6 the county because I had been into see Mr. Lionudakis

7 numerous times about letting him know about the smell and

8 what was going on. I had been on the phone with him and

9 into his business site, and he kept telling me just to be

10 patient, that things would be under control, he was

11 getting them under control, and always asked me to be

12 patient and sent me away with a box of peaches in the back

13 of my truck.

14 I tried to be as patient as I could, but

15 I'm still having these physical complaints. The smell,

16 which I've been keeping a record of now for more than a

17 month, and in my own mind, I knew what was going on before

18 that, but I thought I've got to start keeping a record.

19 And when I called the County, they told me

20 to get in touch with Carrie Cochimba (phonetic), and she's

21 an environmental health specialist with the County. She

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22 asked if I would call her every day and let her know where

23 I smell the smell and at what time, and I've been doing

24 that regularly, and I also have a record here. Sometimes

25 it's over in my yard, not all the time, but too much to

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1 mention and to be acceptable. And every night it is
2 someplace in the area, and I think -- I don't know if it
3 depends on the wind direction or if there's no wind and
4 that's when it tends to just stay around in the area and
5 permeate our yards. I'm not sure exactly what the problem
6 is there.

7 But I'm very concerned then about the air
8 quality, the physical repercussions on my own self. Also,
9 I have followed this. I decided to take a little drive
10 around the community and I thought well, I'm going to stop
11 at the Sierra Enterprise School here. I walked into the
12 office and asked them about -- had they noticed any odor,
13 and both of the secretaries who worked in there said to
14 me, "That's what that smell is." They had been noticing a
15 smell, and I asked if I could maybe have some flyers
16 printed up and leave them for parents or people who would
17 be interested in attending this meeting. And she said
18 that they couldn't take any flyers unless it was okayed by
19 the school district first, so -- but they said they smell
20 it every morning.

21 I would think that probably parents would

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22 be concerned with their children going to school there and

23 having that smell, and I'm not sure, but I would think so.

24 Also, the ground water was another concern

25 of mine because this is -- all this operation is being

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1 done down in a pit which is already close to our ground
2 water level. That's our drinking water, and I know what
3 people put on green waste. Some of it is very clean, but
4 you know that a lot of it isn't. There's -- people change
5 their car oil on their lawns. There's waste from their
6 cats that are on the lawns, and I don't think there's
7 really any way of ensuring that some laborers that are
8 supposed to be down at the bottom of this pit, sifting
9 through this green waste grass are actually getting to
10 some of this material. Maybe some of it, but certainly
11 not a lot of it. And I fear that this is leeching into
12 our drinking water supply.

13 As far as I understand, there's -- that
14 ground down there is supposed to be compacted to a certain
15 density, and I question whether it has actually been
16 compacted to the density that it is supposed to be
17 compacted to. That's to prevent leeching into our ground
18 water.

19 I'm also concerned about my property
20 values. There's the fact that now everything has to be
21 disclosed. Noxious odors need to be disclosed. If I were

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22 to try and sell my house, I would have to disclose that.

23 Who's going to want to buy my house? These are all just

24 really --

25 BOARD MEMBER ROBERTI: In other words, the

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1 notice requirement on you is greater than the notice
2 requirement on Mr. Lionudakis.

3 MS. O'BRIEN: Pardon me.

4 BOARD MEMBER ROBERTI: The notice
5 requirement on you, your rhetorical statement on our laws,
6 is greater than the notice requirement on Mr. Lionudakis
7 if he wants to expand his facility.

8 MS. O'BRIEN: You know, there was no notice
9 whatsoever, and this just appalls me, to any residents.
10 The only reason that anybody knows anything about what's
11 going on here today is because myself, and maybe a couple
12 other people that it had really been bothering, were in
13 contact with the County. And finally we were told by the
14 County there was going to be a meeting last week at the
15 Lionudakis facility. We missed any other meetings that
16 preceded these. We've known nothing.

17 So there were a few people who, in the last
18 minute, were told of this by word of mouth. And so for
19 this meeting, I kind of decided I was going to walk around
20 the community and talk to people, and I did. And there
21 are people as far west -- as I say, I didn't go further

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22 west than Sierra Enterprise School. It could be further

23 west.

24 I've gone down to the Albertson's

25 supermarket and talked to people coming out of the store

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1 there and asked, "Do you smell the smell?" This is two
2 miles to the north, and they have stated, "Yes. What is
3 that? We've been noticing that as we come here shopping
4 over the past month."

5 I've also -- I went into the people who
6 live between Jackson Highway and Kieffer Boulevard. They
7 live in houses there and I talked to numerous people
8 there, just walking the streets, people who are out in
9 their yards and that's what that smell is. We've noticed
10 it the past month or two that didn't know where it was
11 coming from. It's just making us sick. We can't sleep at
12 night. My husband's having problems. So I let them know
13 about this meeting today, and nobody would know anything
14 otherwise.

15 So I -- well, I just would think that there
16 would be some way of delaying acceptance of this
17 standardized permit until either Mr. Lionudakis can prove
18 that this is not going to be a water problem or an air --
19 just a breathing problem. It hasn't diminished. It's
20 diminished -- if it's one or two days, but then it's back
21 to where it was a few days later. So the problem is still

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22 there.

23 Yesterday morning and last night it totally

24 was -- my whole house was full of the smell until 10:00

25 in the morning. I could still walk out in my backyard and

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1 it was in my backyard. And then my whole house reeks of
2 it for the rest of the day because when it's hot, I leave
3 a window open or so, and the smell gets in.

4 CHAIRMAN EATON: Ms. O'Brien.

5 MS. O'BRIEN: Yes.

6 CHAIRMAN EATON: You've fully explained the
7 permeation, and we have a large number of slips. So that
8 we can get to others who may want to speak, if you could
9 kindly wrap it up and others come up we would greatly
10 appreciate if you have the same comments, just say I feel
11 the same as Ms. O'Brien, or if there's something different
12 that's in there.

13 With regard to the water quality while
14 you're still up there, or any of the odors, has the County
15 been notified of this, Mr. Cermak, and has anything sort
16 of been -- I think the three issues, as I heard you just
17 quickly was the compaction, the water quality and some of
18 the air issues, if I'm not mistaken. And I understand
19 that the smell permeates, so I'm not trying to downplay
20 that, but in terms of the three issues that you've asked
21 us to look into.

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22 MR. CERMAK: Jim Cermak with the LEA. As
23 far as the water quality issue, this facility has been
24 issued blanket waste discharge requirements which is under
25 the purview of the Regional Water Quality Control Board.

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1 There are two retention basins there for the wintertime,
2 for the drainage issue. There is no requirement to my
3 knowledge that they have to put in monitoring wells
4 because of the nature of the process. The material that
5 could potentially be contaminated is dumped on a concrete
6 pad that's gone through, picked -- the contaminants are
7 picked out of that, and the material is then ground and
8 either shipped off site or put into windrows.

9 So the issue of contamination is minimized.
10 At that particular point, the material in the windrows
11 goes under a biological and a chemical process which, if
12 there was any types of contaminants, there's a chance that
13 that would be taken care of in the biological, the heating
14 process, et cetera.

15 So to be brief about this, we are not
16 familiar with any ground water contamination problems, and
17 that really doesn't come directly under the jurisdiction
18 of the LEA. It's a Regional Water Quality Control Board
19 issue, as it would be for any other landfills and that
20 type of thing, and there are discharge requirements that
21 the operator has to comply with.

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22 CHAIRMAN EATON: Okay. Thank you,

23 Ms. O'Brien.

24 MS. O'BRIEN: Thank you.

25 CHAIRMAN EATON: Ms. Kathy Franklin. Okay.

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1 Miguel Vasquez.

2 MR. VASQUEZ: My name is Miguel Vasquez

3 and I'm also a resident of Newton Drive. I oppose the

4 issuance of the permit. I voice the same concerns as she

5 does -- air quality, water, and also the property values

6 in the area.

7 I live approximately -- oh, a couple

8 football fields from the entrance, and there are times

9 when you go out in the morning and you do not take a deep

10 breath for fear of coughing. We're just concerned that

11 this can get out of hand at a later date and be faced with

12 a situation where you probably can't move out of your own

13 house because you won't be able to sell it. So that's it.

14 The letter, you have the letter that is

15 signed by both me and my wife.

16 CHAIRMAN EATON: I believe so, Mr. Vasquez.

17 MR. VASQUEZ: And that states our concerns.

18 CHAIRMAN EATON: Any questions of

19 Mr. Vasquez? Thank you for being concise and to the

20 point.

21 MR. VASQUEZ: Thank you.

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22 CHAIRMAN EATON: Richard Lee, I believe.

23 Mr. Lee.

24 MR. LEE: Chairman and Members of the

25 Board, ladies and gentlemen. My name is Richard Lee. I'm

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1 a resident at Newton Drive. According to the report and
2 the previous speakers had well addressed the issue. I
3 would like to make one point. That is, according to the
4 report, the 500 foot zone, and because 500 foot zone only
5 is comprised of business around the area and just blank
6 field, no wonder there's no notices to neighbors like
7 myself. I've never noticed -- never received any kind of
8 notices or anything.

9 And one word to the company, I do -- I
10 fully respect the business that they do, the recycling
11 business, because it's one way to preserve our natural
12 resources and everything, but please put the community
13 first. We're here to improve -- we're here to preserve
14 the natural resources, but we also should be aware of the
15 community in which we all live and make it a better place
16 for us all.

17 Thank you.

18 CHAIRMAN EATON: Thank you. Questions for
19 Mr. Lee? Thank you, Mr. Lee.

20 Okay. I apologize in advance if I butcher
21 the name, but I believe it's either Elvis or Elias Amaral.

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22 Do you live at 5501 Newton Drive, anyone? Okay.

23 Robert Meline.

24 MR. MELINE: Hi. My name is Robert

25 Meline, and I agree with the other opponents and really

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1 appreciate what Ms. O'Brien did. She brought around to
2 our neighborhood all the announcements of where the smell
3 potentially was coming from. And I live about -- I'm not
4 sure how far exactly it is north of the facility, but I
5 would guess it's probably a mile and a half, two miles
6 north, and we didn't receive any notification. This is
7 the first time we heard about a potential facility like
8 this in the area. I've been smelling the smell for a long
9 time and had no idea where it was coming from, but
10 honestly, I didn't know who to complain to. I thought
11 everyone in the whole Rosemont area was smelling it. I
12 didn't realize it was localized.

13 So I guess my first thing would be to agree
14 with the previous people that we definitely need
15 notification, and a lot farther than what's being done.
16 500 feet is ridiculous in this case.

17 I would like to reiterate what Mrs. O'Brien
18 said. It's an intense smell and it's extremely
19 nauseating. You have to close up all your windows. Your
20 house is completely closed. Beginning of September, I
21 purchased -- it was like a \$300 air purifier, and that was

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22 because of the air quality in the area. And Sacramento

23 has really lousy air quality in the first place.

24 As far as -- this is -- since I just found

25 out about this yesterday, I don't know. I haven't been

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1 following it. I don't understand what's gone on so far,
2 but it sounds like they're going to want to increase the
3 volume of material they're going to use at this facility,
4 and I would have to oppose that based on the track record.

5 They have a business and they should know
6 how to run it, and I appreciate they're trying to get it
7 to meet all the residents' concerns and everything. I
8 hope they're able to do it. But as far as approving
9 allowing additional material on the basis of just in the
10 last couple of months so many complaints, and I don't
11 believe that it's very -- that you have received as many
12 complaints as you really would have if people would have
13 known what was going on. You would have a lot more
14 complaints.

15 So I would have to say no to the additional
16 volume and I would have to request that we have some kind
17 of extensive notification, much larger radius. I don't
18 know how far the smell has gone. Now I'll go out and
19 drive around and try to find where it's strong, but I
20 would say at least two to four miles of the location. I
21 know that would be very difficult to do, but I think it's

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22 important.

23 And that's pretty much all I have except I

24 agree with the previous speakers.

25 CHAIRMAN EATON: Thank you, Mr. Meline. I

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1 I know you have another family member here. I believe it's

2 Lisa.

3 MR. MELINE: Yes.

4 CHAIRMAN EATON: Would she care to speak or
5 just echo your --

6 MR. MELINE: I'm not sure.

7 CHAIRMAN EATON: While we're doing that, I
8 think it should be pointed out, as the Senator pointed
9 out, that the notice requirement, even though we feel --
10 at least I personally, I won't speak for my other
11 colleagues -- saying that the notice requirement,
12 unfortunately, that is not something we can resolve here
13 today or base it on, but I think some of the other
14 comments are there.

15 I'm sorry.

16 MRS. MELINE: That's okay. Basically my
17 husband addressed most of the issues. My only other
18 concern that wasn't really mentioned was my son has been
19 diagnosed with RAD, which is asthma-like in its symptoms,
20 and I'm not sure if this is maybe contributing to that
21 problem. But my concern would be that when there are

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22 releases from this site -- and I am opposed to this,
23 although I'm not opposed to composting. It's a good
24 thing. Are there going to be any bacterial discharges
25 into the air and the community that would be affecting the

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1 community? I'm an engineer by degree and profession, but
2 not a chemical engineer, and I would just ask that that be
3 looked into as a byproduct of this site.

4 Thank you.

5 CHAIRMAN EATON: Thank you.

6 BOARD MEMBER ROBERTI: Mr. Chairman.

7 CHAIRMAN EATON: Mr. Roberti.

8 BOARD MEMBER ROBERTI: I have a question of
9 counsel on the grounds on which we approve or disapprove,
10 and Section 17867, that all composting activity shall be
11 conducted in a manner that minimizes vector, odor impacts,
12 litter hazards, nuisances and noise impacts and minimizes
13 human contact with inhalation, ingestion, and
14 transportation of dust particulates and pathogenic
15 organisms.

16 I guess it is said that that means that we
17 have to -- well, that opposition has to show some kind of
18 lack of effort on the part of the permittee to use all the
19 latest available methods to reduce odor, in this case,
20 odor and other vectors. And I understand that. My
21 question, however, is, and I'm not talking about this

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22 specific spot, but any composting facility.

23 What would happen if you had an LEA who

24 just decided they were going to approve almost anything --

25 and I'm not saying that here -- and the person seeking the

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1 permit wants to increase ten-fold the amount of composting
2 material that comes in and says well, I'm going to use all
3 the modern techniques to control odor and vector. At some
4 point doesn't quantify itself, given the parameters of the
5 spot, possibly pose a violation of the section,
6 irrespective of how many modern techniques the permit
7 seeker wants; and therefore, isn't that something that we
8 should take into consideration, without saying that my
9 extreme example is something that's happening at this
10 site?

11 CHAIRMAN EATON: I think what you're asking
12 is at what point -- I don't want to rephrase -- but at
13 what point, at least under statute, does the efforts to
14 increase negate any minimization efforts.

15 BOARD MEMBER ROBERTI: That's right.
16 Another way to put it.

17 CHAIRMAN EATON: I think. The kind of
18 intersection there.

19 BOARD MEMBER ROBERTI: Yeah. Yeah.
20 Frankly I don't think the statute gives us too much help.

21 MR. WHITEHILL: I can try to answer it.

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22 If we were to step away from the permit
23 issue for a second and take a look at a compost facility
24 that's currently operating, you're right. At some point
25 in time, no matter what they do, there are still

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1 numerous -- I don't know how many -- confirmed odor
2 complaints that are logged by the LEA. But you're right,
3 at some point that would at some point become impossible
4 to make that finding, that they are taking all steps to
5 minimize odor impacts.

6 So you're right, even if they were to do
7 everything, and of course we're not saying that they
8 haven't tried everything there is to try at this point,
9 but the LEA would eventually have to make that finding,
10 that there's nothing that can be done to minimize, to
11 further minimize the odor impacts, and then would be
12 required to take enforcement action at that point.

13 BOARD MEMBER ROBERTI: Thank you.

14 MS. TOBIAS: I would like to add to that.

15 CHAIRMAN EATON: Ms. Tobias.

16 MS. TOBIAS: I think where I would also
17 draw the line is between the permitting function and the
18 enforcement function. When the Board is called upon to
19 issue a permit, what you have to assure yourselves is that
20 you are confident, based on the information that staff has
21 provided you, that the LEA has provided you, and that the

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22 outcome has provided you, that they can meet the state

23 minimum standards that we have established. And that has

24 to be based on, in all fairness, the existing situation.

25 So although you can take into account if

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1 you have an operator -- if you have an operator who has,
2 in the past, not met the standards and then wants to
3 increase the size of their facility, that's something you
4 could take into account. If you have an operator, for
5 instance, who comes in, takes over an existing facility or
6 buys a facility and wants to increase it, then you would
7 have to look at the new owner, the present owner, and
8 again assure yourselves they can meet those kinds of
9 standards. Then if they get the permit and they don't
10 meet the standards, then we would be looking at
11 enforcement actions against them.

12 In all cases what you need to be looking at
13 is substantial evidence in the record that would be the
14 basis for either your permit issuance or for your
15 enforcement. So you would want substantial evidence in
16 the record of why you are approving the permit, which is
17 normally provided by the proponent. If you are either not
18 going to approve a permit or if you're looking at
19 enforcement action, you're going to want substantial
20 evidence that shows that they are not meeting those
21 standards and that there's a violation there.

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22 BOARD MEMBER ROBERTI: Question. Are you

23 saying that Article 6 -- what code is this, Public

24 Resources Code?

25 MS. TOBIAS: No. These are regulations.

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1 BOARD MEMBER ROBERTI: Regs. Okay.
2 Article 6 of the California Code of Regulations. Are you
3 saying that Article 6 applies only to enforcement and not
4 to permitting, or -- it seems to be kind of unclear.

5 MS. TOBIAS: I don't know if --

6 BOARD MEMBER ROBERTI: My quick reading
7 and, I'm only reading the article itself.

8 MS. TOBIAS: I don't know if the P and E
9 stuff --

10 MR. WHITEHILL: I would say that standard
11 applies regardless of whether there's a permit being
12 applied for. If we were able to determine prior to a
13 permit coming forward that they definitely aren't taking
14 steps to minimize odor impacts, then yes, that would be a
15 violation of that standard regardless.

16 BOARD MEMBER ROBERTI: For both enforcement
17 purposes or expanding a permit.

18 MR. WHITEHILL: Right. We're required to
19 make a finding that they're operating consistent with
20 state minimum standards before granting a permit.

21 MS. TOBIAS: Mr. Chairman.

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22 BOARD MEMBER ROBERTI: Are you saying
23 that -- now, most of the language has been, as far as
24 past actions -- are you saying that in view of -- what we
25 may be hearing, and I haven't made my mind up absolutely,

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1 where we may be -- and I'm trying to figure this out -- is
2 that based on what is there right now, we have a
3 borderline situation in which the seeker of the permit is
4 within current regulations, we may have a situation in
5 which his request for an expansion, which I understand
6 because we have a need for composting. I want to say
7 that, although the notice not taking consideration is
8 horrible, but that's nothing I can concern myself with.
9 This request for an expansion, however, could put him in
10 a position of -- based on my best judgment, because that's
11 all I can operate on -- beyond the restrictions of the law
12 based on his expansion.

13 Can I take into consideration the fact that
14 right now, and maybe counsel and also what our past
15 practices have been, but I want to know what our past
16 practices have been as well. Can I take into
17 consideration that under the current status of the law,
18 they're at borderline, and the expansion that they're
19 requesting, in my best judgment, will push them beyond
20 borderline, even within the understanding they're making
21 every attempt that they can to contain the odor and

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22 whatever else?

23 MS. TOBIAS: If this is -- if you have a

24 current operator who has been there long enough to show

25 you what the record is of their compliance with the law,

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1 including these minimum standards, and they're asking for
2 a permit in your hypothetical and you're not convinced
3 that they can deal with the increase, then yes, that could
4 be a basis for you to say that you don't believe that they
5 can meet 17867(a)(2), but you need to -- you will need to
6 put that --

7 BOARD MEMBER ROBERTI: In the record.

8 MS. TOBIAS: -- evidence in the record.

9 And by evidence, you'll basically be going on what you
10 heard today. And in a motion you would be making the
11 finding that you think that they cannot operate within
12 compliance of that standard.

13 BOARD MEMBER ROBERTI: Could I -- and once
14 again I'm hypothesizing because I'm trying to think this
15 one out. Could I vote against a motion to grant the
16 permit and yet say I need more time to make an affirmative
17 finding on my own to deny the permit? You see what I'm
18 saying?

19 MS. TOBIAS: If you deny the permit, and if
20 there are four votes to deny the permit, then the permit
21 is denied. They can come back again. And we don't have

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22 ordinances here, such as the County has, where you either
23 deny with prejudice or without prejudice which controls
24 how soon they can come back in. So they can go back out
25 and reapply tomorrow if they want, with more evidence to

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1 show you what's going on in six months or whatever they
2 choose to do.

3 So if you had four votes, or if there were
4 four votes to deny the permit, which is what would be
5 required, then they could reapply whenever.

6 BOARD MEMBER ROBERTI: Thank you.

7 Mr. Chairman if I might say to the
8 audience, many of whom may be new here, for myself and
9 maybe for the other Board Members, I'm trying to find out
10 what my parameters are as far as what I can and cannot do
11 as a Member of the Board, and to say that I especially am
12 trying to be very careful because I am not a legislator.
13 If I were a legislator, I would have an entirely different
14 feel for this. And that doesn't mean we don't have any
15 movement, but I'm trying to figure out what my
16 restrictions are here.

17 CHAIRMAN EATON: Mr. Jones.

18 BOARD MEMBER JONES: Mr. Chairman, just two
19 things along that line.

20 First one is, as I read this where it says
21 all composting activities shall be conducted in a manner

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22 to minimize vectors, odor, I think it's been documented
23 that they've brought scarabs on site. Scarabs are one of
24 the ways that you minimize odors. Are they operating in a
25 way that could minimize odors? Obviously, if you bring

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1 that equipment on site, in my view, you are making an
2 attempt to operate and minimize and doing the things to
3 bring them in.

4 The other thing I think something needs to
5 address is that right now, they're permitted to bring this
6 a 1,000 yards a day into the gate. The 100,000 yards --
7 at one point the way composting works is there are
8 odors -- there are some odors associated with the
9 grinding. There are some odors with the association in
10 that first window of opportunity when you are turning it
11 as it is starting to break down. But then in the next
12 stages, odor goes away because it's now becoming dirt, or
13 the odor is minimal.

14 So the 100,000 tons has absolutely nothing
15 to do with the odor because that last stage, that last
16 30,000 tons or yards, has gone through the two stages of
17 the process where it's killed pathogens, it's killed the
18 weed seed, it's done all the things that it needs to do to
19 become a good compost. And now it is just -- it's done
20 fermenting, and now it is in a place where it is reaching
21 it's final anaerobic stage and becomes a product to be

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22 taken.

23 So to minimize the amount of material that

24 goes into storage doesn't minimize any of those first two

25 steps, which is where any odors could be associated with.

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1 All it does is it takes it when it becomes less of a
2 problem and says we don't want the best product available.
3 Sell it as something less.
4 And I think that we need to understand
5 that, and I think the other thing, I agree with Senator
6 Roberti on the zoning issues. But having come from this
7 industry and having to deal with these types of issues all
8 the time, the zoning requirement, the noticing
9 requirements are conditioned on what is the applicable
10 zoning for the facility. If it's in a residential area,
11 it is different than if it is in an industrial or
12 agricultural area. So every one of these zoning
13 requirements, while we're hearing from people two miles
14 away -- believe me, I did a facility one time where people
15 came from three miles away who didn't know where the
16 facility was, but they were coming from three miles away.
17 I believe everybody here knows where the facility is, but
18 it's a condition of what is the zoning. And the zoning in
19 this, I'm assuming, is agricultural and industrial, not
20 residential. And this is a use that fits into those --
21 that zoning.

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22 So I just bring that up because the scarabs
23 are going to minimize the issue, the sprayers are going to
24 minimize the issue, they're operating pieces that are
25 going help to minimize a problem, but that the storage is

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1 strictly -- once you get past that first 60, you're just
2 getting a good quality product that has a higher value.
3 CHAIRMAN EATON: Okay. Ladies and
4 gentlemen, our court reporter needs a much needed break.
5 She's been going for some hour and a half or so, perhaps
6 an hour and 20 minutes. So we'll take a ten-minute break,
7 but I do want to make one other announcement.
8 With regard to this item, when we come back
9 from break, I intend to wrap this up within a half hour,
10 so somewhere between 12:00 and 12:15, thereafter take a
11 break. For those in the audience who are here on the
12 other remaining items, whether it be RPPC, captive
13 insurance, C&D regs, so if you are here for those items,
14 if you want to go and take an early lunch or return phone
15 calls, or what have you, please do so at this time. I
16 will assure you that we will not take up your items until
17 after the lunch break. But I do have still many, many,
18 many slips, and we intend to move through them quickly.
19 Not to quell public testimony, but really to sort of move
20 along and as a courtesy to others. So right now if we
21 could take a ten-minute break with the court reporter,

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22 we'll resume about 20 to 12:00 and finish up.

23 Thank you very much.

24 (Brief recess taken.)

25 CHAIRMAN EATON: Welcome back, everyone.

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1 All right. While we're waiting for a couple of Members
2 who will be here shortly, returning calls and taking care
3 of some other business, I have numerous slips. So I would
4 ask your cooperation and your testimony again not to be
5 repetitive, but to move quickly and so that we can have a
6 discussion and dialogue among the Members based upon the
7 testimony.

8 With that, Ms. Donna Wilcox, is she still
9 here? Welcome.

10 MS. WILCOX: Thank you. Hi. My name is
11 Donna Wilcox and the live in the Biezer homes (phonetic).

12 CHAIRMAN EATON: I'm sorry.

13 Senator Roberti.

14 BOARD MEMBER ROBERTI: I had two ex partes.

15 CHAIRMAN EATON: Yes. I should probably do
16 that. Two ex parte communications, I'll ask if there are
17 any ex parte communications.

18 BOARD MEMBER ROBERTI: Yes. I had ex parte
19 communication with Mr. Bob Houston regarding the
20 construction and demolition regulations, and with Mr. Jim
21 Cermak regarding Lionudakis.

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22 CHAIRMAN EATON: Okay.

23 BOARD MEMBER JONES: Mr. Chairman, one with

24 Mr. Bob Houston on the C&D, and then unfortunately I

25 didn't get their names. They're probably going to

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1 testify. Two gentlemen from the neighborhood came up and
2 met or talked to me about the issues. They're sitting out
3 in the audience. I think they're both still going to
4 testify.

5 CHAIRMAN EATON: And I had some
6 conversation with Mr. Bob Houston regarding C&D regs.
7 Ms. Wilcox.

8 MS. WILCOX: I live in the Biezer Homes
9 just off Jackson, as far as -- I want to reiterate what
10 the previous people said, the smells and everything and
11 affect on our homes. The only reason I didn't complain is
12 I didn't know who to complain to, and now I know who to
13 complain to.

14 They were talking that as of September 14th
15 that the smells have improved. No, they haven't. It's
16 exactly the same as it was from the very beginning. I
17 didn't know how to document. I'm going to start
18 documenting. It has not gotten any better. It's just as
19 bad as it was before. If they've improved it, it's sure
20 not noticeable.

21 That's all I have to say.

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22 CHAIRMAN EATON: Thank you, Ms. Wilcox.

23 One of the questions that I would have for

24 any of the speakers to come up has there been any

25 complaints to the Air District, and if so, are any of

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1 those documented? I would like to know if there has been
2 any evidence of that as well.

3 Mr. Cermak.

4 MR. CERMAK: Mr. Chairman, compost
5 facilities are under the jurisdiction of the LEA, and the
6 Air District is really dealt out of them. That's one
7 specific. And what I would like to say here now is that
8 we had attempted to put the word out, and obviously we
9 weren't successful in covering as big an area as we should
10 have, but what we're trying to do as the LEA is we're
11 trying to get the complaints funneled to us, and what
12 we're attempting to do is put together -- we're plotting
13 those on a map to see if there's any kind of correlation
14 between time of day and things of that nature.

15 So I would suggest if anyone has an odor
16 complaint, that they phone in the LEA. If we're not
17 there, there's voice message, and we have and we will
18 continue to follow up on any complaints we receive, and
19 our whole intent in this is to ensure that the operator is
20 using the best available technology, doing what they're
21 supposed to do by their operations plan, and if not, then

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22 our intent would be to take the appropriate enforcement

23 action.

24 So if anyone has an odor complaint, I would

25 suggest they phone. 875-8504 is the number they should

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1 call. We also put that number out at the operator-called
2 meeting and still understand that a lot of people did not
3 attend that. That's the way that we're involved directly
4 in odor complaints. And again, what we're attempting to
5 do is respond to all of these and to see if there's a
6 cause for it; and if there is a cause, some type of
7 solution. And if the operator is not cooperative, then
8 our intent would be to take the appropriate enforcement
9 action.

10 CHAIRMAN EATON: Thank you, Mr. Cermak.

11 Next, Mr. George R. Smith. Mr. Smith,
12 while you're walking up, two individuals who had to leave,
13 Lana Erickson and Anna Damien echoed similar comments in
14 opposition and had to leave. So just for the record, they
15 can both be recorded in opposition to it. Unfortunately
16 they had to leave.

17 Mr. Smith, sorry.

18 MR. SMITH: No problem. I live in the
19 first home west of the facility on Fruitridge Road there,
20 on the south side in the first home. And like everybody
21 else, had no previous knowledge to this with notice. And

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22 also, the smells there are at times, with the wind and the

23 atmospheric conditions, quite noticeable.

24 We also, as property owners, do worry about

25 our ground water because in that area, we have our own

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1 wells.

2 CHAIRMAN EATON: Thank you.

3 Senator Roberti.

4 BOARD MEMBER ROBERTI: If I could ask to
5 speak to the speaker.

6 CHAIRMAN EATON: Mr. Smith, could you come
7 back one second? Senator Roberti has a question.

8 BOARD MEMBER ROBERTI: Your home is zoned
9 how?

10 MR. SMITH: How? Industrial, commercial.

11 BOARD MEMBER ROBERTI: Industrial
12 commercial? All right. Thank you.

13 CHAIRMAN EATON: John Weimer. I'm sorry.

14 MR. WEIMER: My name is John Weimer and I
15 am opposed.

16 CHAIRMAN EATON: The J and I.

17 MR. WEIMER: Yeah.

18 CHAIRMAN EATON: Absolutely. Okay. Tells
19 me something.

20 MR. WEIMER: I didn't know where this was
21 coming from, actually, until I got this notice somebody

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22 bothered to put in our door. I live in what they call New
23 Rosemont, and all summer long it's been frequent noxious
24 odors, can't sleep with your windows open and have to run
25 your air conditioning.

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1 I happen to work three miles west, leave in
2 the evening. You get smell there, so certainly a lot
3 larger area than what we're talking about here. I would
4 say three or four miles. Just a horrible odor. And I
5 think people have complaints I imagine if you call animal
6 control, they've got complaints because I thought it was
7 skunks. Didn't dawn on me we would have something like
8 that going. I just assumed being close to the fields over
9 there and everything, that we were having problems with
10 skunks. Anyway --

11 BOARD MEMBER ROBERTI: Are you -- excuse
12 me, Mr. Chairman. How are you zoned?

13 MR. WEIMER: Residential.

14 BOARD MEMBER ROBERTI: Are you zoned
15 residential?

16 MR. WEIMER: Uh-huh. I've been in this
17 neighborhood for 19 years and --

18 BOARD MEMBER ROBERTI: Has your home always
19 been residential?

20 MR. WEIMER: Absolutely.

21 BOARD MEMBER ROBERTI: Let me ask staff.

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22 Are the majority of the complainants zoned residential or

23 are they zoned industrial-commercial?

24 MR. CERMAK: It appears by the map that

25 we've started to update -- again, I didn't hear -- there's

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1 a lot of folks we didn't know, but the ones that we have,
2 it started off we got complaints from across Jackson
3 Highway and that was back in July. Those have gone down
4 considerably. The majority of the complaints that we've
5 received up until the first part of September came from, I
6 think, one of the speakers, a couple of the speakers here.
7 I'm not sure. Newton Drive, which is south-southwest or
8 mostly west of the facility, in looking at the map, that's
9 ag-residential. I believe those are larger lots and are
10 zoned ag-residential.

11 BOARD MEMBER ROBERTI: Ag-residential.

12 What are the various types of zoning of the general area?

13 MR. CERMAK: Where this particular property
14 is, that was zoned mining and industrial.

15 BOARD MEMBER ROBERTI: The property itself,
16 but I mean the area within the ambience.

17 MR. CERMAK: To my knowledge, within I
18 would say a half mile, I don't think there's anything
19 that's zoned residential. There is a gentleman here --

20 BOARD MEMBER ROBERTI: This gentleman says
21 he's zoned residential.

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22 MR. CERMAK: But I think he said he's three

23 miles from it.

24 MR. WEIMER: I'm probably a mile and a

25 half, two miles.

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1 MR. CERMAK: There is a gentleman here, if
2 he would be willing to get up and speak, who is
3 representing the owner, and I think he could answer that
4 question better than I can.

5 CHAIRMAN EATON: Just for the record, the
6 individual who was speaking was Mr. Cermak who is with the
7 LEA.

8 BOARD MEMBER ROBERTI: Yes. Thank you.

9 MR. WEIMER: And I'm not experiencing the
10 problems of the folks that live closer. My eyes aren't
11 watering, and I don't wake up, coughing. It's just really
12 irritating. I can't leave the windows open, and it
13 stinks.

14 CHAIRMAN EATON: Jerry Scott.

15 MR. CERMAK: Did you want to hear from --
16 Senator Roberti, did you need more clarification?

17 BOARD MEMBER ROBERTI: I'm trying to --

18 CHAIRMAN EATON: Maybe Mr. Scott can help
19 us.

20 BOARD MEMBER ROBERTI: Maybe Mr. Scott can
21 help us a little.

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22 CHAIRMAN EATON: And the other gentleman,

23 welcome.

24 MR. SCOTT: My name is Jerry Scott. I'm

25 the President of the Rosemont Community Association. Our

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1 south boundary is Jackson Highway. A big part of our area
2 is residential. Let's say north of the golf course, there
3 is all residential there, and probably the majority of
4 west of Mayhew is all residential. There is some
5 industrial-commercial there on Jackson. There is some on
6 Bradshaw.

7 Basically the Rosemont community, we have
8 approximately 6,500 homes in Rosemont. We have about
9 2,500 apartments in the community. We have a voice mail
10 in our community. We do receive complaints. It wasn't
11 until about three to four weeks ago that we actually
12 determined where this was coming from. And since then, we
13 had called the nuisance line from the County. They said
14 they had gotten numerous complaints. We have in turn sent
15 a letter to Don Notolli, the Supervisor for this district,
16 for the County. Haven't heard back from you yet.

17 But back when this originally started, the
18 County came to us as an association to ask our blessing on
19 putting it there. One of our board members went and
20 visited another facility and could not smell anything at
21 that facility, and we're not sure exactly how after

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22 hearing some of the comments today if it was the same type

23 or if it was this chip deal that somebody mentioned. But

24 we're very concerned with it.

25 One of the areas there, of course we've got

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1 the golf course that's in the Rosemont community there.
2 After playing golf and you've got a south wind going, it
3 is really obnoxious. Sitting outside the snack bar to eat
4 at the tables there, you just can't do it. But I've had
5 complaints as close as one block south of Folsom, right
6 here on New Dawn Drive saying they were smelling, which is
7 quite a ways away. We've had people over on Mayhew.
8 These are all residential areas, not zoned anything else,
9 that I'm mentioning.

10 But there has been a lot of complaints for
11 this smell, and we're just trying to see if we can't get
12 something done about it. It would be great if you could
13 delay giving them a permit to do this until they've got
14 the current situation under control and that odor greatly
15 decreased. We would sure appreciate any effort that could
16 be done in that area.

17 CHAIRMAN EATON: Questions of Mr. Scott?
18 Thank you.

19 Benjamin Macias. Did I get it?

20 MR. MACIAS: Yes, you did. Thank you.

21 Good afternoon, ladies and gentlemen of the

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22 Board, Mr. Chairman. I'm a homeowner in the Biezer Homes

23 also, about a mile and a half north-northwest of where

24 this site is. We had no idea of it either until last

25 night exactly where the smell was coming from.

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1 Until I heard a lady here, speaking earlier
2 about her symptoms, her eyes watering and such like that,
3 I have noticed -- I have four children, and I notice that
4 a lot of -- three of my children, eyes watering, runny
5 noses at various different times. I don't know if it's a
6 product of this. I thought maybe summer colds. It comes
7 and it goes. This is something that I wish we could delay
8 action on until we can find out if this is the cause of
9 this. It could be an environmental issue.

10 The other thing I wanted to say, other than
11 going for walks at night, playing in the park -- I live in
12 a cul-de-sac. Right across the street is a park. Playing
13 in the park with my children, smelling this odor is pretty
14 terrible, plus I saved a lot of years to buy a home and
15 property values, who knows what's going to happen with
16 that.

17 A couple of things that was said -- this
18 gentleman, I'm not sure what your name, Mr. Cermak?

19 MR. CERMAK: Yes.

20 MR. MACIAS: You talk about picking out the
21 contaminants and such like that. I'm not sure exactly how

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22 you could pick out spray, fertilizer, weed killers, things

23 like that, that people put into their green waste

24 containers and get taken to these sites. I don't know

25 exactly how they pick this out.

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1 What they're spraying this with, I don't
2 think anybody has really addressed that. I don't know.
3 Is that an organic matter? Is this environmentally safe?
4 I know the contaminants are put on a concrete pad, so when
5 it rains and it drains through this stuff and goes into
6 the ground, what happens then?

7 I know that in our area in Biezer homes, in
8 the covenants and restrictions, we're not even allowed to
9 use steer manure or have compost piles. And I could
10 pretty much guarantee all of you that my two bags of steer
11 manure wouldn't touch the smell that this place sets off.
12 And I haven't noticed any difference, any smelling any
13 better, either.

14 Mr. Lionudakis got off pretty cheap with
15 having to mail out any notices to us. He probably spent a
16 whole 99 cents to let people within 500 feet of him know
17 what was going on. I know that I work downtown, and we
18 have -- at the music circus during the summertime, I
19 manage that. I know that we're regulated by noise levels
20 and such like that as part of the senses, and I don't know
21 if there's anything that's relating to this as bound by

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22 smell or something like that. But if there was, it would

23 definitely be an issue here also.

24 I think I pretty much covered everything,

25 other than the fact that if any of you lived in this area,

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1 you would be standing on this side of the podium and
2 opposing this also.

3 So I thank you for your time.

4 CHAIRMAN EATON: Thank you, Mr. Macias.

5 Any questions of Mr. Macias?

6 Maureen -- it looks like Walker.

7 For the record, Anthony Vasquez.

8 I think he was one of the gentleman

9 Mr. Jones had referred to in his ex partes.

10 BOARD MEMBER JONES: As was Mr. Smith.

11 MR. VASQUEZ: Thank you very much. My name

12 is Anthony Vasquez and I am a homeowner on Fruitridge

13 Road, approximately a half mile west from the Lionudakis

14 Wood and Green Waste Recycling pit.

15 And you know, his pit has been a nuisance

16 ever since he's opened up, the odors coming out of that

17 pit. I know I'm reiterating what a lot of people have

18 said already, but it's very much a real issue, and as a

19 homeowner I'm very concerned about my property values.

20 We have met with Mr. Lionudakis back on the

21 14th, and he's tried to address some of these issues. I

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22 truly believe that he is trying to address these issues,
23 but the bottom line is the smell is not going away. You
24 can bring in turners, you can bring in suppressors, but
25 the odor is going to be there.

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1 I hope you guys are going to delay until he
2 can prove that he can eliminate these odors in increasing
3 his holding capacity. Back on the 14th, he had
4 mentioned -- his attorneys had mentioned that he's been
5 reaching out into the community.

6 I had not met Mr. Lionudakis until the
7 14th. Then on that day, he came back and visited me at my
8 home and tried to reassure me everything was going to be
9 taken care of, and he stopped by again about two days ago
10 just to pop in and be neighborly. I appreciate all that,
11 but the bottom line is I'm a homeowner and a resident of
12 the area and I'm very concerned.

13 I have two small children. Twice this
14 summer they've had eye infections during the peak time of
15 this smell and odor. They had goo coming out of their
16 eyes and we had to get them drops. I don't know if it's
17 in direct relation to this pit, if air spores are coming
18 out and causing infections, but I'm concerned. I have
19 children, and I'm also on a well, and he addressed the
20 matter of his not contaminating the ground water. But
21 when he wets down this material, he has some basins or

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- 22 retaining pits that trap all his water. Where is all that
- 23 water leeching into that's going into these holding ponds?
- 24 They're going right into my aquifer and back into my well
- 25 potentially, and I have great concerns.

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1 That's all I have to add. If anybody has
2 any questions.

3 CHAIRMAN EATON: Any questions?

4 BOARD MEMBER ROBERTI: Mr. Vasquez, how are
5 you zoned?

6 MR. VASQUEZ: I'm zoned, I believe I'm an
7 agriculture resident. I'm on a half acre.

8 BOARD MEMBER ROBERTI: You're agricultural
9 residential?

10 MR. VASQUEZ: I believe so.

11 BOARD MEMBER ROBERTI: Thank you.

12 CHAIRMAN EATON: Thank you.

13 Mr. Johnson.

14 MR. JOHNSON: My name is Tuffy Harold
15 Johnson, and I'm resident in the area. I'm 82 years old
16 now. I'm going to make it as short as I can.

17 I've lived on the corner of Jackson and
18 Bradshaw Road. You'll have to pardon me. Since 1927,
19 that area out there was all agricultural at one time, and
20 the corner that I own at one time was commercial. It was
21 the original Wall Station, which was the name of the area

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22 at that time.

23 Right now, the reason I'm having trouble

24 speaking is because last night the odor was so strong that

25 my eyes, my throat, my nose -- I have a headache and I

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1 have pain in my chest here from the fact that I smelled
2 this odor all night. It is terrible. If you don't
3 believe me, come out and smell it.

4 You know, I lived in the country where
5 there were cows and sheep and cattle and so forth. I know
6 what manure smells like. Believe me, this is a lot worse.
7 I know some of the folks here have got their mind pretty
8 well all made up. There's rules and regulations. Might
9 tell you, I was an elected county official myself. I was
10 the Director of the Fire Protection District for over 16
11 years, and I appreciate the fact that I get the
12 opportunity to talk to you.

13 I know that it's pretty hard to change
14 zoning and so forth. As an elected official, I was always
15 glad to see new business and new communities come in,
16 helped everybody that we could, but this is private
17 enterprise. The County has bought part of my property for
18 expansion of roads and so forth. Not happy to see that
19 happen. But here's a situation where it's for profit
20 only. These people are big money people. They've got
21 other plants. They've mentioned it to you.

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22 They also mentioned Lucille Barmby. I've
23 known since generations the Barmbys. She's one of my
24 oldest and dearest friends. She's my nearest neighbor.
25 She's easily mislead. She's old, she's under stress, she

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1 has a lot of problems in her family right now.

2 So -- I know that this gentleman put down

3 that we talk about how much notification we got. I'm

4 pretty aware of what's going on. I'm pretty well known in

5 that district. I never got any notification. I never

6 attended any of the meetings. I haven't met this

7 gentleman yet. He did come to Lucille Barmby's place

8 because she went down and confronted him and he came with

9 oranges and was a nice person, and I'm sure he is.

10 But the point that I'm trying to make is

11 please, do not let him expand or do anything more than is

12 necessary until he gets this situation under control. The

13 odor is terrible. Come over and just like driving into a

14 wall. Try it. See what it's like, especially when the

15 gentle breeze is blowing. It's affecting a lot of people.

16 I thank you for your time.

17 CHAIRMAN EATON: Thank you, Mr. Johnson.

18 Any questions of Mr. Johnson?

19 Reverend Daryl Shelly, I believe it is.

20 Robert Louis. Moving quicker than I had

21 expected.

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22 Rebecca Porter. Welcome.

23 MS. PORTER: Good morning. I'm Rebecca

24 Porter, and I'm a parent of two children at Sierra

25 Enterprise Elementary School. It's at the corner of Hedge

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1 and Fruitridge, and it is the northernmost elementary
2 school in the Elk Grove School District.

3 It was stated earlier that the schools had
4 been notified. I spoke to the principal this morning when
5 I found out about this meeting. As of 9:00 this morning,
6 she had no idea there was a waste facility anywhere
7 nearby. I spoke with other parents as they were dropping
8 off children. They have been smelling the smell, the kids
9 have been smelling the smell. I am at school at least two
10 times a week, volunteering. My husband and I are very
11 active in our school district.

12 And I smell it. It comes, it goes. Some
13 days you can't smell it, some days you can. This morning
14 I definitely could smell it.

15 So I would ask that you please delay or
16 postpone this permit until the smell is taken care of.

17 Thank you.

18 CHAIRMAN EATON: Thank you, Ms. Porter.

19 Any questions?

20 Jim Marta, Cordova Golf Course.

21 MR. MARTA: Thank you, Senator and Board.

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22 CHAIRMAN EATON: He's the Senator.

23 (Laughter)

24 MR. MARTA: I'm the golf pro at the Cordova

25 Golf Course, which is operated by the Cordova Recreation

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1 Park District and we have 150,000 to 200,000 golfers each
2 year, visiting our facility. Some of them spending as
3 much as four to five hours on the golf course, and you can
4 imagine the amount of complaints that we get on that. And
5 I wonder how many do not complain, but just don't show up
6 anymore and that is what my concern is.

7 Also I would like to have one question
8 here. Are you masking the smell or the odor, or is the
9 toxic still there? I'm sorry if I missed that earlier.
10 Is there somebody that could answer that?

11 CHAIRMAN EATON: Mr. Cermak.

12 MR. CERMAK: Jim Cermak with the LEA.

13 What we have discovered is the primary
14 source of the odor at that facility is the incoming loads,
15 and the reason for that is that if you have green waste
16 that has not started decomposing before it gets to the
17 facility, you generally don't have odors.

18 What we've discovered is that the waste
19 that's coming, the green waste that's coming to that
20 facility has already started the decomposition process
21 before it gets to the facility. And what's happened is

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22 that essentially is coming from the two-week, every
23 two-week pick-up of green waste from the citizens of
24 Sacramento County. And when that's delivered to the
25 facility, it compounds the problem because you've

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1 concentrated it.

2 What the operator has instituted is a
3 deodorant, so to speak, so when that waste comes into the
4 facility, it is spread out and a deodorant is applied to
5 it. And from what we've learned, the secret to having a
6 compost facility where you minimize the odors as much as
7 you possibly can is you deal with that problem up front,
8 not only by -- deodorizing is just a temporary solution.

9 In addition what they have to do is they
10 have to process that in an expeditious fashion.
11 Processing means it's put through a grinder so it gets to
12 the -- you start putting oxygen into the material. When
13 you put oxygen in, the reason you're getting odors is
14 because the material is decomposing in an oxygen-free
15 environment and it off-gases the objectionable odors.

16 So if you can get that process and put into
17 the windrows or put into some type of storage, you're
18 going to have odors initially, but it shouldn't be a
19 continuous thing.

20 And that's what we've learned. We're
21 learning as we go on this, too. That the chemical that

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22 they use to do that is a safe chemical.

23 MR. MARTA: A few years ago, about seven

24 years ago, Hastings was having a compost pile out there

25 and he masked his with peppermint so it smelled like

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1 peppermint, which was just as bad.

2 (Laughter)

3 CHAIRMAN EATON: Sounds like a car wash

4 when you go in and --

5 MR. MARTA: Glad spray.

6 CHAIRMAN EATON: Senator Roberti.

7 BOARD MEMBER ROBERTI: My map doesn't

8 indicate. You're north of Jackson?

9 MR. MARTA: Yes. We're three quarters of a

10 mile east of Jackson.

11 BOARD MEMBER ROBERTI: Three quarters of a

12 mile east of Jackson.

13 MR. MARTA: Excuse me. From the site. On

14 Jackson Highway, three quarters of a mile from the site.

15 BOARD MEMBER ROBERTI: Oh, you're on

16 Jackson Highway, three quarters of a mile --

17 MR. MARTA: From the site.

18 BOARD MEMBER ROBERTI: From the site.

19 Okay. I got it. And then a number of the homes are north

20 of you or north of the golf course?

21 MR. MARTA: Yes. Thank you.

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22 CHAIRMAN EATON: Thank you, Mr. Marta.

23 Rachel -- oh, boy.

24 MS. CACHARELIS: My name is Rachel

25 Cacharelis.

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1 CHAIRMAN EATON: Thank you.

2 MS. CACHARELIS: I, too, live in the Biezer
3 development, and I wasn't informed until last night with
4 this yellow flyer. And I consequently didn't have time to
5 go out in my car and drive and see how far I live from the
6 plant. So I can only tell you that I live probably within
7 two miles of it.

8 And the smell, it's terrible. It's
9 disgusting and it's waking me up at night. I also wanted
10 to tell you that I'm a student at City College, and I
11 drive home every night from there. I take night classes,
12 and when I get to the intersection of Power Inn and
13 Folsom, I can smell the smell there, and that is many
14 miles away from this plant. It is not just a problem
15 locally. It is miles away.

16 And I -- I can't believe that somebody
17 would only notify people within 500 feet of the plant.
18 It's ridiculous. And now that I do know that I can call
19 somewhere and complain, I guarantee you guys that many
20 people will be calling. I plan to notify my community and
21 I plan to give them the number, and I guarantee you that

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22 you will be getting more phone calls.

23 I had a question about the chemicals that

24 you're going to be putting in the deodorizers, I guess,

25 there. How can you prove that they are safe? How have

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1 they been proven to be safe?

2 MR. CERMAK: I'll let the consultant answer
3 that.

4 CHAIRMAN EATON: Mr. Edgar.

5 MR. EDGAR: Evan Edgar, Edgar and
6 Associates.

7 It's not really a deodorizer. It's an
8 enzyme called Ecosorb. So it doesn't really mask or
9 deodorize the chemicals like any other type of masking or
10 scent. It's an enzyme that neutralizes the smell. And
11 Ecosorb is being used down south in other locations where
12 they've got multi-collection in Ventura and Orange County.
13 We're finding out there's a trend within the industry
14 where green waste was collected in carts and automation is
15 every two weeks. So other locations who were having the
16 same type of problems statewide were bringing in a
17 neutralizer called Ecosorb in order to manage the smells
18 coming off the trucks.

19 CHAIRMAN EATON: Thank you.
20 Layne Tinskey?

21 MS. TINSLEY: Hi. My name is Layne

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22 Tinsley.

23 CHAIRMAN EATON: Tinsley. I'm sorry.

24 MS. TINSLEY: That's okay. I'm really kind

25 of relatively new in the Sacramento area. I've only lived

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1 here about three and a half years. So I had bought a
2 home, a beautiful house that's brand-new, in a nice new
3 development which is developing really nice. It's kind of
4 neat to see the community, you know, of people who really
5 care. And I think that's what we want to see, is a
6 community that continues to grow and is beneficial to not
7 only our health, but our children and pregnant women and
8 the health factors and my kids.

9 And you know, that's kind of what I thought
10 I was moving into. And to be uninformed about, you know,
11 an investment that you've made, that for me is a real big
12 deal, I've got a lot to lose. A lot of people who bought
13 these brand-new homes, they have a lot to lose. We want
14 to live in a nice area, where our kids can grow up and
15 they're safe. And that's why I moved to Rosemont. And
16 people are great, and the smells are just -- it's really
17 obnoxious.

18 BOARD MEMBER ROBERTI: How is your home
19 zoned?

20 MS. TINSLEY: I'm in the new Biezer
21 development, so we're all residential -- and which is not

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22 far from the golf course. And I love to golf, so I can

23 understand his understanding. There's so many things that

24 are offered in our community. I've been watching it grow.

25 And the smell, it's a deterrent. It's a deterrent to want

1 to live in an area that could possibly affect your health
2 or your children or just the entire atmosphere of living
3 in your home, just the quality of life.

4 These are people with concerns of -- they
5 live in homes, they live for the quality of life. And
6 Rosemont is a really lovely community and really
7 developing nice. So I'm real happy with that and I would
8 like to think that the place I live cares enough about the
9 people who are coming in and the people who are moving in
10 and the businesses that want to move in as well.

11 So that's all I wanted to say.

12 You had mentioned what the name of the
13 particular product was that's used on --

14 CHAIRMAN EATON: The neutralizer?

15 MS. TINSLEY: Yeah, the product name.

16 MR. EDGAR: Ecosorb.

17 MS. TINSLEY: That's it. Thanks.

18 CHAIRMAN EATON: Thank you, Ms. Tinsley.
19 Brent Mikesel?

20 MR. MIKESEL: Mikesel.

21 CHAIRMAN EATON: I don't want to use a pun

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22 here, but I sure am not making this place smell any better

23 with the way I'm pronouncing some of these names.

24 MR. MIKESEL: No problem. Call me anything

25 but late for lunch.

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1 My concerns and so forth I think have been
2 very well reflected by each of the last dozen or so
3 neighbors that have spoken. I think Mr. Jones brought up
4 a valid comment earlier about the appropriate uses --
5 usage of property related to the areas and how it's zoned
6 and so forth.

7 I think the central point that I have here
8 in response to that is that the impact and so -- the
9 impact of the odors and so forth coming off of the
10 processing plant are spread throughout areas that are
11 literally zoned residential and/or commercial and so
12 forth. But as far as other things are concerned, I think
13 just simply say ditto to what my neighbors have just
14 stated.

15 CHAIRMAN EATON: Thank you. Any questions?

16 Last slip that I have is Mr. John Collins,
17 if he's still here. Mr. Collins. I notice you have
18 attached a couple of -- a one-page document as well. So
19 if there's any additional information, it would be greatly
20 appreciated.

21 MR. COLLINS: Thank you, Mr. Chairman. I

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22 appreciate the opportunity to speak today.

23 In a way I'm kind of glad I'm last because

24 I don't think there can be any doubt in your mind here

25 about the impact of this plant in this area, and it's not

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1 a neighborhood how you term neighborhood. This is an area
2 problem.

3 You heard the president of Rosemont
4 Community Association, 3,500 homes, 15,000 people, 150,000
5 golfers affected by this plant's inability to control its
6 own operation, and you have a permit before you today to
7 increase that. You talked about your limited scope of
8 duties. You are all people that are appointed, we hope,
9 to represent the best interests of the citizens of the
10 state of California, not the citizens of the recycling
11 community or the for-profit community.

12 Your mandate here under 17867(1)(2) says
13 that all composting activities shall be conducted in a
14 manner that minimize odor, minimize human contact with
15 inhalation, transportation of dust or particulates. This
16 is clearly within your scope of authority here, and if you
17 are saying that you are limited in your actions and you
18 cannot deny this permit because of the County issue or
19 passing the buck like we see everybody doing around here
20 every time we try to contact somebody, I think with all
21 due respect, you are derelict in your duties if you take

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22 that position.

23 I'm here at a public hearing today, and I'm

24 going to testify publicly that this operation is in

25 violation of its use permit, in violation of the law. You

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1 cannot approve a continuation for this operation if it's
2 in violation of the law, and I'll be specific about that.

3 They have a requirement under the use
4 permit that they compact 90 percent, dense compacting.
5 Here's an engineering report from the very respected
6 people, Wallace, Coole and Associates, that says, and I
7 quote, "Upon completion of the laboratory curve calculated
8 the test results, both areas failed to meet the projected
9 specs of 90 percent." They failed the compaction tests,
10 which is a condition of their use permit, and we're going
11 to allow them to now double and triple their operation
12 when they're not complying with their use permit?

13 Here's a report from the California
14 Regional Quality Management Control Board that says that
15 they're applying for a waiver for their report of waste
16 discharge, and it says that they have not completed the
17 proper paperwork to do that and they are not in
18 compliance. And we checked with these people yesterday,
19 and as of yesterday they're not in compliance.

20 So how can you go ahead and approve these
21 people when they're not in compliance with the use permit,

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22 which is a violation of the law? You can't give them
23 permission to go ahead and continue violating the law,
24 and when your own code here says that very clearly, that
25 the odor impacts and particulate matters and inhalation

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1 are clearly within your jurisdiction.

2 Ladies and gentlemen, thanks very much. I

3 hope you will do your civic duty and at least, at the very

4 minimum, postpone the granting of the permit until we show

5 these people can get this operation under control. Do I

6 have any questions?

7 Thank you very much.

8 CHAIRMAN EATON: Any questions of

9 Mr. Collins? Okay. I think -- I'm sorry.

10 Ms. Moulton-Patterson.

11 BOARD MEMBER MOULTON-PATTERSON: Thank you,

12 Mr. Chair.

13 As the staff certainly knows, that many of

14 you people might not know, I've only been on this Board

15 for three weeks, so I certainly don't know all the

16 answers, but until I can have staff assure me that there

17 aren't any health problems here, I couldn't vote to -- for

18 this permit. I'm not saying that I would want to vote

19 against it, but I would like to see for myself and go out

20 and visit the site because I think a lot of good points

21 were made here today.

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22 And I know staff has worked really hard on
23 this and I appreciate that, but just in good conscience, I
24 can't vote to expand this operation until I know that
25 there are no health problems. I would be concerned also,

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1 as a mother and grandmother, and I really want to know for
2 myself. And so is there a way, staff? And I'm just one
3 person on this Board, but what would be the problem in
4 postponing until a later date?

5 CHAIRMAN EATON: Mr. Whitehill.

6 MR. WHITEHILL: Well, the problem is that
7 the Board only has 30 days to concur or object in a
8 proposed standardized permit and our 30 days expires, I
9 believe, tomorrow. The alternative would be that if the
10 operator and the LEA were willing to wave time for a
11 determinate period of time until the Board Members can
12 feel comfortable, perhaps, or for a certain number of days
13 and they could come back with a proposed permit, perhaps
14 next month or the month after, but that would only be
15 with permission from the LEA and from the operator.

16 CHAIRMAN EATON: Ms. Moulton-Patterson,
17 your timing is impeccable.

18 BOARD MEMBER JONES: I think part of that
19 description is we have 30 days to act. If we don't act,
20 the permit is deemed approved. There is one part of that
21 that I don't think got --

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22 MS. NAUMAN: Right. And the other course
23 of action could be to not concur and then allow him to
24 come back at a later date with a new application.

25 BOARD MEMBER JONES: And that takes four

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1 votes not to concur.

2 MS. NAUMAN: Correct.

3 CHAIRMAN EATON: Senator Roberti.

4 BOARD MEMBER ROBERTI: This is a

5 controversial issue, and I can't understand, for the life

6 of me, why it comes up before us with one day to go. I

7 mean -- I just can't understand it. That's worse than the

8 notice requirement Sacramento County imposes -- or the

9 lack of notice requirement. We have one day, one Member

10 who's only been here for less than two months -- three

11 weeks. Excuse me.

12 CHAIRMAN EATON: She hasn't even gotten to

13 30 days yet.

14 (Laughter)

15 BOARD MEMBER ROBERTI: And frankly, I

16 haven't been briefed on this that extensively we're so

17 swamped. And one day to go, yes or no, up or down.

18 That's not the fault of the permit seeker. That's

19 something in our own operations that has to be controlled.

20 CHAIRMAN EATON: I could turn on my

21 recording. As you well know, I've been one that's led the

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22 fight both on permits, as well as others. 60 days -- 30

23 days is just inadequate for us.

24 BOARD MEMBER ROBERTI: And for myself, I

25 want to echo what Member Moulton-Patterson has said.

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1 First, one of the most exciting things in the whole
2 business of waste management is composting. That's my
3 point of view. But there is something that's more
4 important than that, and that's public health. And I
5 think the statutes indicate we have to take that into
6 consideration, and voting on this up or down with 24 hours
7 to go, I will not be doing my duty by our own statutes and
8 the opposition has made a compelling case. I'm not saying
9 they've made a convincing case, but they have certainly
10 made a compelling case and I cannot vote myself for the
11 permit this afternoon.

12 CHAIRMAN EATON: I was just about to say
13 before you spoke that your timing was impeccable,
14 Ms. Moulton-Patterson, because I think Mr. Edgar was going
15 to talk rebuttal, but perhaps now having heard what
16 options there are, the non-concurrence or a waiving of the
17 time limit may be most appropriate, Perhaps.

18 As representative, he also asked for a few
19 minutes of rebuttal.

20 MR. EDGAR: Thank you, Chairman and Board
21 Members.

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22 I want to focus on two issues, and the time
23 issue. I want to talk about odors and land use. First of
24 all, this is a new operation. We all know that. It's
25 here to address the community's AB 939 recycling. It's a

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1 new compost facility, and part of the County decision to
2 go composting was to make it cost effective with biweekly
3 collection, and that's part of the main source of odors.
4 But with relocating it to this new site, the operator had
5 to do a lot of improvements, had to get some equipment.
6 The equipment was backlot and scarab.

7 Now we're up and running. We have the
8 equipment, we have the concrete pad, we have the
9 infrastructure and we are minimizing odors.

10 First of all, let's talk about the odors.
11 I believe there's a lot of multiple sources within that
12 community. In between the facility and Newton Road,
13 there's an unmanned public septic disposal facility. They
14 have had a lot of nuisances and a lot of spillage
15 recently. That's a source of --

16 BOARD MEMBER JONES: Where is that at?

17 MR. EDGAR: There's a lot of livestock in
18 that community.

19 BOARD MEMBER JONES: Where is that septic?

20 MR. EDGAR: In between Newton and the
21 facility, about halfway I understand.

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22 Another issue is the location. Right now,
23 we're about two and a half miles away from the facility.
24 A lot of people come there early morning and leave late at
25 night.

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1 If you go out to Power Inn and Folsom which
2 is about four miles from here, it's only a half mile away
3 from K and M. K and M is one of those chipping and
4 grinding facilities that processes green waste. That's
5 another source of odor that is out there, which is a half
6 mile away from Folsom and Power Inn. So within --

7 AUDIENCE MEMBER: The breeze doesn't blow
8 in that direction.

9 CHAIRMAN EATON: If we could just hold
10 comments and let him go.

11 AUDIENCE MEMBER: This is bullshit.

12 CHAIRMAN EATON: If one of you would like
13 to be rebuttal, I'm happy to provide that opportunity.

14 BOARD MEMBER JONES: Mr. Chairman, I have
15 one thing to say. That kind of language doesn't work
16 here. You've got women, you've got people here. It
17 doesn't work. I don't want to hear it.

18 CHAIRMAN EATON: Mr. Edgar.

19 MR. EDGAR: Thank you, Mr. Chairman and
20 Board Members. So multiple sources within the community.
21 The on-site sources are three different on-site sources.

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22 One is collection, number two is processing, and three is

23 windrows.

24 Initially, on the part of the collection,

25 that has been a problem and will continue to be a problem,

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1 and we are doing everything possible to minimize that odor
2 with respect to not only using best management practices,
3 but a neutralizer. We're working with the County, with
4 Mr. John Febbo who is here today, on different collection
5 techniques like rinsing out the trucks with neutralizers
6 at the end of each day. And that was a commitment from
7 the County in order to take a look at that and in order to
8 actually rinse out the trucks, which is a source of odor.
9

10 At the point of collection when it's dumped
11 on the concrete pad, we have problems. We're mitigating
12 it. We're using available technologies.

13 On the part of the processing, we process
14 that material within 48 days. We add water, we add
15 neutralizers --

16 MR. CERMAK: 48 hours.

17 MR. EDGAR: Within 48 hours, we process the
18 material before it goes to windrow.

19 As part of this permit, by having a scarab,
20 by introducing air and water into the windrow, them
21 themselves do not emit odors if you do it right. The

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22 operator has vast experience on Austin Road in Stockton

23 with operating a compost facility, and he knows how to do

24 that. That is not the source. So I think we identified

25 the source from on-site and there's opportunity there in

1 order to neutralize that in working with the County.

2 I believe the operator has made a lot of
3 good faith effort. He has reached out to the community
4 many times, has a follow-up meeting with them Don Notolli,
5 the County Supervisor. We do have complaint forms on-site
6 for documentation, for anybody to come on-site following
7 LEA advisory on the odor complaint form.

8 As part of our progressive odor management
9 plan, as well as we have a contingency plan, that should
10 this not be solved and should the on-site stuff making at
11 the point of collection, we can transfer it down to two
12 other facilities. One is in Stockton and the other one is
13 called Hyponex. So we are using best available practices
14 in order to do so.

15 With regards to the land use, the County
16 has made a decision following all the processes that it's
17 compatible with local decision making process. We have
18 adopted a conditional use permit and CEQA document, plus
19 two different community planning groups back in 1996 voted
20 on this. The Vineyard Community Planning Group voted
21 seven to zero approving this facility, as well as the

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22 adjacent community group to the east of it called -- let
23 me get it correct here in written comments, resolved as
24 part of the CUP finding, the adjacent community voted on
25 May 9th, 1996 to approve 15 to zero that this was -- is

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1 compatible with the local zoning.

2 Now, what is the zoning and the surrounding
3 zoning? It is IRSM. That means Industrial Reserve
4 Surface Mining. It has been that way for 10 to 15 years.
5 All the adjacent property around there is IRSM, and the
6 map I have included in our handout shows all the different
7 acronyms, for lack of a better word to describe it. So if
8 you look at the handout we did provide, on page 2 it shows
9 all the local land use, and you can see it's surrounded by
10 IRSM to the north, to the west. To the east is M-1, which
11 is a manufacturing zone, and to the south is IR,
12 industrial reserve. As well as the adjacent property
13 owners who have to live and work there, we have letters of
14 support.

15 I think that the operator has made that
16 good faith effort. He's using best management practices,
17 and I believe that this permit is a good permit and is
18 going to make a valued compost in order to meet the AB 939
19 needs of Sacramento County.

20 With me today is Thad Johnson. He's a
21 lawyer for Lionudakis with regard to land use questions

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22 that he tracked as acquiring the CUP for the previous

23 owner.

24 We urge your support today.

25 CHAIRMAN EATON: Is there anyone who would

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1 like to be the representative and make comments in the
2 audience when Mr. Edgar spoke on the other issue? I'll
3 entertain a one-time.

4 Mr. Collins, if I'm not mistaken.

5 MR. COLLINS: Thank you for the opportunity
6 to respond.

7 The last point that this gentleman made was
8 that they have letters of approval from the adjacent
9 landowners. Well, one of the adjacent landowners,
10 Mr. Sands, as I'm sure you've read, is an employee of
11 Mr. Lionudakis. And you've heard this gentleman who's
12 lived in the area all his life tell you about the other
13 lady. When we went to talk to her, she was too sick to
14 talk to us, if that tells you anything, the one that lives
15 right on the edge of the plant.

16 I'm appreciative of the mitigation efforts
17 they've made. I think they stretched it when they said
18 they've outreached to the community. They outreached when
19 Ms. O'Brien started her campaign here about two weeks ago.
20 That's the extent of the outreach, and they sure didn't
21 tell anybody about this meeting except those that showed

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22 up. Nobody in the Rosemont area, the immediately affected

23 residential area to the north and west, was invited to any

24 meetings.

25 The bottom line on this is they're not

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1 doing the job. They're not doing the job with what they
2 got in all their mitigation so far, and now they're asking
3 your Board to let them increase their potential to not do
4 the job. They should be required to prove that they can
5 do the job before they're allowed to expand.

6 Thanks very much.

7 CHAIRMAN EATON: For those of you who have
8 been here since early this morning, you may have seen
9 Mr. Pennington came back in. Please believe that he was
10 not disinterested. He was given the assignment to handle
11 the other emergency that we have come before us, which is
12 the tire fire. So it's surely not a disinterest on his
13 part. He was handling that issue, and he was doing it on
14 behalf of the Board. And we thank you, Mr. Pennington.

15 BOARD MEMBER PENNINGTON: Thank you for
16 making that statement, Mr. Chairman. It's true I am very
17 interested.

18 BOARD MEMBER JONES: Mr. Chairman.

19 CHAIRMAN EATON: Mr. Jones.

20 BOARD MEMBER JONES: I have a couple of
21 statements to make because -- in fact, you know there's

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22 been a lot talked about that this operator has to prove
23 it. I think one thing this operator has proved in three
24 other locations is that he is a good operator. In fact,
25 this Board helped fund a recycling project through our

1 RMDZ loans. This operator has got a long history of doing
2 a class job in composting.

3 Being the industry seat on this Board and
4 having permitted over probably 40 facilities, I'm
5 accustomed to sitting in the audience for these kinds of
6 events, and it's tough for neighbors. It's called "not in
7 my backyard." People want to live in a certain community.
8 They generate waste, they generate yard waste, they
9 generate household hazardous waste, but they don't want --
10 they want it to disappear. They want to put it in the can
11 and it disappears and it goes somewhere else out of their
12 community, into another neighborhood, and it's dealt with.
13 And that's okay because that's environmentally sound, but
14 they don't want it in their neighborhood.

15 I heard testimony from eight people that
16 talked about odor but also talked about property values.
17 We understand that, but this operator, who I don't know
18 personally, I just know him by reputation, has a
19 reputation of doing the job. The scarabs that he's
20 brought on-site are going to help do the job.

21 But if this Board, every time it is faced

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22 with citizens coming forward that don't want to see a
23 facility anywhere around them, we will never meet the
24 mandates of AB 939. We will never be able to put in the
25 infrastructure that is going to let this Board deal with

1 source reduction, deal with recycling.

2 I'm going to make a motion to adopt

3 Resolution 1999-480, which is the consideration of a new

4 standardized composting permit for Lionudakis Wood and

5 Green Waste Recycling Compost Facility.

6 CHAIRMAN EATON: Before you do that, I

7 would like to ask if any Members would have any comments

8 before any motions are made.

9 CHAIRMAN EATON: Ms. Moulton-Patterson.

10 BOARD MEMBER MOULTON-PATTERSON: Just

11 again, I really don't think I have much of a decision here

12 because I'm not necessarily opposed. I just need more

13 time, and since there's just 24 hours and Mr. Edgar hasn't

14 talked about waiving it, I am forced to vote no. I have

15 been faced both on the Coastal Commission and on the

16 Huntington Beach City Council with many angry audiences,

17 and many times I've had to take the -- make the choice to

18 face that and vote an unpopular decision. But in this

19 case I just haven't had time to see for myself, and so

20 that's why I'm voting no, Mr. Jones.

21 BOARD MEMBER ROBERTI: Mr. Chairman.

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22 CHAIRMAN EATON: Senator Roberti.

23 BOARD MEMBER ROBERTI: I want to regale the

24 Members as to one more indication why I'm voting the way

25 I'm going to vote. I think it's a close case. If I have

1 to vote today based on the record before us, I would vote
2 against the permit. I think that the regulations which
3 guides our action clearly indicate that the inability of
4 the composter, and in this case from everything I gather,
5 a very decent businessman, to regulate what he currently
6 has from being a nuisance, if not something against the
7 regulation, certainly indicates his inability in the
8 future to deal with something which would increase the
9 amount of composting material.

10 I do not agree with those who say that it's
11 the early composting that counts, not the later
12 composting. I once sniff-tested a composting plant, and
13 it certainly does indicate that the early composting is
14 the worst, but if you increase up to the amount that the
15 composter here wants for material you have continuously
16 on-site, that's an awful lot. That's an awful lot of
17 stink, and that will have an effect. And the inability to
18 control what's there now I think indicates a future
19 inability to do so with the composting that's required.

20 Having said that, I don't want this to
21 reflect on anything I feel toward composting or toward the

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22 request of Mr. Lionudakis who, from everything I gather,
23 is trying to do his best, but sometimes doing your best
24 isn't good enough, and I think we may have that situation
25 here.

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1 CHAIRMAN EATON: Mr. Pennington, anything?

2 BOARD MEMBER PENNINGTON: Yes,
3 Mr. Chairman. Just a question.

4 I understand from the discussion here real
5 quick that the operator was asked to waive time frame.

6 CHAIRMAN EATON: I don't think it's been
7 formally asked. I think it was sort of discussed as in
8 terms of what options there are with regard to vote
9 requirements or some way. Ms. Moulton-Patterson raised
10 the issue of what is that, so I don't think that's ever
11 been formally requested, but --

12 BOARD MEMBER PENNINGTON: Maybe I can
13 formally request that, then. If the operator would waive
14 the time frame so that we could have a little better --
15 like Ms. Moulton-Patterson can have a better look at it,
16 and I'd like to go look at the facility and that sort of
17 thing. I feel squeezed here because I am pro business,
18 but I also see a lot of complaints here that I would like
19 to evaluate myself. And since I haven't been through all
20 the testimony, I guess I would ask you if the operator
21 would give us a chance to take that extra time to look at

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22 it.

23 MR. EDGAR: Chairman and Board Members, I

24 can answer that question on behalf of Phil Lionudakis.

25 Right now, because he's allowed to take

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1 1,000 cubic yards across the gate he likes to store
2 on-site for 100,000 cubic yards to make the compost as
3 what he's doing. Because of the limitations of the
4 registration permit, he's forced with hauling the material
5 down to Stockton from Hyponex, which is quite the
6 long-haul distance. That expense that he has right now
7 was on billing due to the bid for Sacramento County zone
8 in order to recoup that transportation cost to Stockton
9 over the next 30, 60, 90 days, whatever that extension is.
10 So on behalf of the operator, before today we did talk
11 about that extensively, about waiving the clock and the
12 pros and cons, to give adequate time and effort in order
13 to give the Board Members the site visits that you talk
14 about. We did have a few advisors out.

15 But Lionudakis, because of transportation
16 costs and the contract we have with the County, has
17 declined to extend the time.

18 BOARD MEMBER PENNINGTON: All right.

19 CHAIRMAN EATON: Well, I guess to add my
20 two cents as somewhat disappointing in the sense that I
21 think there are substantial issues that have been raised.

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22 There's a public policy here that we have as a Board to
23 promote composting and recycling. On the other hand,
24 there is a very, very, very large doubt raised, and I
25 think even by the admission of the proponent, that they

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1 have been experiencing problems in the current operation.

2 As such, that's evidence to me that we
3 haven't solved everything and I do know -- and I don't
4 know Mr. Lionudakis as the owner -- I just can't believe
5 that we can't sit and try and figure out in 45 days -- it
6 may not come up with the same result, the permit may go
7 forward, but if we have these problems, maybe there is a
8 way we can minimize and document some of the things we
9 haven't had here. Because by your own admission, there
10 have been problems, and if there are problems with that
11 limited amount, do they increase or not increase? I would
12 rather be able to know prior to than thereafter.

13 So I would ask on behalf of the Board and
14 really the public, because obviously you can continue to
15 operate, that the contract extend for a period of time;
16 that surely it would seem to me that a reasonable period
17 of time in which not only Board Members, but really what
18 we can do to isolate and see if really the assertions
19 about where the odors are coming from. Mr. Cermak has
20 indicated that he has a number, a telephone number where
21 that can be so that we can look at those items. I

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22 wouldn't ask for a duration of time to extend beyond
23 probably 45 days, but that would surely be enough for any
24 or all who want it. And I would also invite the public as
25 well to be able to go in.

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1 I have not heard anything with regard to
2 compaction rebuttal. Do we know about that, staff, just
3 out of curiosity? Is that within our purview, I guess I
4 should ask first and foremost.

5 MR. CERMAK: That was part of the RFI and I
6 think the operator could probably answer that question.

7 CHAIRMAN EATON: Those were open questions
8 that haven't been responded to, and I would just ask if
9 you could just sort of confer and reconsider before we
10 take the vote on Mr. Jones's motion.

11 BOARD MEMBER JONES: Mr. Chairman, can I
12 ask a question?

13 CHAIRMAN EATON: Sure, Mr. Jones.

14 BOARD MEMBER JONES: We've got a
15 notification here. The neighborhood has been contacted.
16 We had testimony that people were contacted yesterday. I
17 don't know what that flyer looks like, but I want to ask.
18 Does anybody think there isn't going to be 50 calls a day
19 on odors between now and whenever the delay is? That's a
20 subjective term.

21 It is -- you know, I understand the issues.

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22 I understand the need of the Board Members to go out and

23 see the site. I understand that. I honor that, and all I

24 can say is I went out to that site and looked at that site

25 and didn't -- I know there are some odor issues, but I

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1 also know in the operation of a composting facility that
2 the equipment that has been brought on-site is going to
3 mitigate that.

4 This thing doesn't say that -- the statute
5 or the regs don't say there will be no odor. What it says
6 is they will do everything in their power to minimize the
7 operation and the odor. I feel strongly that we are going
8 to see a response put together in 45 days that's going to
9 make it even that much tougher to vote on this thing than
10 it is today. And that only I bring to you from past
11 experience.

12 If -- you know, there are some options
13 here. If this facility continues to be a problem, then
14 the LEA is charged with fixing that problem. The LEA is
15 charged with bringing an enforcement action against them.
16 And if the enforcement actions go unheeded, then he can
17 bring that back to this Board to pull the permit.

18 We have options. What we don't have, what
19 we need to be aware of is this is a facility that's been
20 going on for a while. I don't know if we give 45 days, do
21 we say keep it at 10,000 or do we waive the tonnage and

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22 let him operate at 100,000? I don't know that. We're
23 definitely not going to get to the bottom of the issue if
24 we say you can't bring in 100,000 because that will never
25 answer the question, but we have a mechanism. And the

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1 mechanism is the LEA that can -- that if they don't
2 operate to state minimum standards and they continue and
3 they refuse to do the mitigation that's necessary to deal
4 with these, with any complaints or violations of state
5 minimum standards, then he's forced to bring that permit
6 back to us.

7 This isn't like we're giving a permit and
8 washing our hands. It's only the first step. But I think
9 we walk down a very dangerous road not to make a decision
10 today because we -- I know what I would do if I was
11 opposed and I have been opposed to things before. I've
12 been opposed to different facilities that could have had a
13 competitive edge against me. I know how to put the troops
14 together to kill something. But boy, if we postpone this
15 for 45 days and let the phone calls come in every day for
16 45 days, we're never going to get to the bottom of this
17 and it doesn't make sense to me.

18 MR. EDGAR: Can the operator take two
19 minutes in order to caucus and report back?

20 CHAIRMAN EATON: Sure.

21 MR. EDGAR: Thank you.

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22 (Brief recess taken.)

23 CHAIRMAN EATON: Can I have your

24 attention, please? Thank you. Time of 10:30 in the

25 morning have arrived and all testimony -- it's 1:15.

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1 Excuse me.

2 Mr. Edgar.

3 MR. EDGAR: Evan Edgar, Edgar and

4 Associates, on behalf of the operator.

5 Thank you for the time. We had a lot of

6 good testimony today plus a lot of good information. And

7 given the fact that the operator has been incurring a lot

8 of expenses to haul down to the facility down in Stockton

9 and down in Hyponex, we have to kind of weigh that in.

10 That's why that original decision was to go forth today

11 with the permit because of the extended cost to do that.

12 But the operator has acted in good faith the whole time,

13 ever since the community was first involved in the initial

14 CUP and CEQA. Ever since he moved there and the community

15 became aware of it, he again operated in good faith --

16 good faith gesture in regards to getting equipment, good

17 faith working with the County and Ecosorb, and everything

18 possible in order to mitigate and minimize odors.

19 With that in mind, the operator will

20 continue to operate in good faith. We do have the County

21 Supervisor coming out. We have another monthly workshop

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22 with the citizens coming up. So I think the operator has
23 shown good faith and will work with this Board to get the
24 site visits that you guys desire, and work with the
25 advisors and work with the community. When we come back

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1 in 30 to 60 days, I think the community will realize that
2 other off-site sources of odors are out there, that
3 on-site has been minimized, and work with the Waste Board
4 staff and LEA to waive the clock for a 30- to 60-day
5 period and come back with Mr. Cermak and the LEA in good
6 faith and the community.

7 So we take the suggestion wholeheartedly
8 and will work with our Sacramento County contract with
9 regards to incurring some additional expenses to go to
10 other facilities in the meantime.

11 Thank you for the opportunity and the time
12 to make that decision.

13 CHAIRMAN EATON: Just one other thing,
14 Mr. Edgar. Between 30 and 60 days, we can do 60 but
15 you're allowed to come in earlier if it need be. Would
16 that be sufficient so we have a time certain? Because 30
17 to 60 is somewhat vague and not really the notice that we,
18 as a Board, or the public would --

19 MR. EDGAR: Thank you, Chairman. Up to 60
20 days would be adequate.

21 CHAIRMAN EATON: Mr. Cermak. I'm sorry.

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22 MR. CERMAK: Jim Cermak with the LEA.

23 We're also required to concur and I will do that. I think

24 the thing that will help us, though, as an LEA, is first

25 of all, we want to cooperate with any of the Board

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1 Members. And if we know what the concerns are and that
2 kind of thing, obviously odors, but tours and things of
3 that nature, we would be more than willing and happy to
4 accompany the Members and work with the citizens.

5 That's the whole purpose of this, is to try
6 to get this so it's a win-win for everybody. And if we
7 know what the concerns are, if there's other concerns
8 other than odor, we would like to know about it so we can
9 perhaps provide answers if we're capable.

10 CHAIRMAN EATON: One other thing I should
11 mention, and I think that's an excellent suggestion,
12 Mr. Cermak. We had done that on at least one other
13 occasion, where we, as Board Members, have gone down. And
14 I would ask wholeheartedly that if the citizens and the
15 other individuals who testified today would perhaps agree
16 to it, we -- in Santa Barbara, two or three months ago --
17 not dealing with compost -- took a number of Members down
18 to visit the site, along with the group of opponents who
19 were opposing the project. And we actually toured the
20 site. Everyone was able to ask questions about what was
21 taking place.

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22 I would ask that perhaps maybe that same
23 mechanism be considered. It was good for the Members. It
24 was good for the public. So if there is indeed going to
25 be scheduling, that might be one mechanism to be used to

1 solve the problem.

2 I also want to assure everyone that this is

3 not a delay, but that there is actually an ability to

4 bring the permit back within the 60 days therefor.

5 MS. TOBIAS: Mr. Chairman, can I --

6 CHAIRMAN EATON: Absolutely.

7 MS. TOBIAS: -- can I suggest you continue

8 this to the meeting of November 16th and 17th rather than

9 a 60-day, which I think --

10 CHAIRMAN EATON: Fine.

11 MS. TOBIAS: That way we won't -- it gives

12 the people here notice. We don't have to renote it, if

13 you continue it, and we won't be quibbling about the days.

14 CHAIRMAN EATON: Without objection -- yes,

15 Mr. Pennington.

16 BOARD MEMBER PENNINGTON: Mr. Chairman. If

17 we do that, though, if everybody is intending to bring it

18 back at the next Board meeting, we would still be able to

19 do that; correct?

20 MS. TOBIAS: You can renote it, if you

21 want to do that, or you may want -- if that's how you want

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22 to do it. You may want to continue it. 30 days gets you
23 to the San Luis Obispo Board meeting. 45 days gets you to
24 the first week in November, and somewhere around 55, 60
25 days gets you to the November Board meeting.

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1 So you can either continue it to a
2 specified meeting, whichever one you would like, and that
3 way you don't have to renote. If you don't want to set
4 the meeting but you want to see what happens, then you're
5 going to need to renote it.

6 I will point out that the November meeting
7 is here. The last meeting in October is in San Luis
8 Obispo.

9 CHAIRMAN EATON: Mr. Edgar.

10 MR. EDGAR: Thank you, Chairman. Would
11 this be continued as you have in the past with other
12 items, keep on noticing until we're ready with the
13 process?

14 BOARD MEMBER PENNINGTON: We can continue
15 it to the next meeting. And if everybody isn't ready, we
16 can continue it and that will stay within the 30 to 60.

17 MS. TOBIAS: If you do that, you have a
18 substantial number of the public who are not -- who are
19 going to have to appear at every one of those meetings
20 until they find out when the item is. With the San Luis
21 Obispo meeting, you may not want to continue it.

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22 CHAIRMAN EATON: We do have an October 20th

23 meeting here.

24 MS. TOBIAS: You do have an October 20th

25 meeting.

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1 BOARD MEMBER PENNINGTON: I would be in
2 favor of doing that, and then 10 days out or a week out,
3 if we see we're not going to make it --

4 MS. TOBIAS: We can post on the internet.

5 BOARD MEMBER PENNINGTON: We can post on
6 the internet.

7 CHAIRMAN EATON: So for all of those in the
8 audience and all this Board speak and all the other
9 wonderful things, let me see if I can try and simply put
10 it.

11 We have presently scheduled three Board
12 meetings, actually four, but three over the course of 60
13 days. One would be October 20th here in Sacramento. We
14 have one of our quarterly meetings outside Sacramento,
15 which is in late October, and then we come back here in
16 November. Part of the discussion is to be able to give
17 you the opportunity that you have talked about not having
18 sufficient notice, et cetera, in trying to balance those
19 needs.

20 So with that we will reschedule or continue
21 this matter until October 20th, which is a meeting here in

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22 Sacramento. What I would appreciate is at least -- and
23 I'm not sure Ms. Dominguez. Do we have the addresses on
24 most of those speaker slips? Just so that if -- I think
25 so. If we could add those to our notice requirements so

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1 that they would have them.

2 But the October 20th meeting which we're
3 continuing this to does not necessarily mean it will be
4 heard, if there aren't sufficient advances made by both
5 the proponents as well as the opponents. But for now, we
6 will continue it to October 20th, which will be here in
7 Sacramento. That will ease the burden, so that Mr.
8 Collins, Ms. O'Brien, Mr. Vasquez and others who have
9 spoken will know.

10 MS. TOBIAS: Mr. Chairman, I understand
11 there might have been names and addresses being collected
12 in the back. I'm not certain, but I did hear something
13 about that. So that might be a way of collecting a list
14 of that as well.

15 CHAIRMAN EATON: All right.

16 BOARD MEMBER JONES: Mr. Chairman.

17 CHAIRMAN EATON: Mr. Jones.

18 BOARD MEMBER JONES: Either October 20th or
19 November 16th or 17th?

20 CHAIRMAN EATON: That's correct. That's
21 correct. Either of those two days. I think it would be

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22 not in keeping with either any of our own views on public

23 participation to take a meeting and move it to San Luis

24 Obispo when a decision is being made. I have seen others

25 who have done that, but this, I can assure you, these five

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1 Members would never consider that.

2 Is there any questions that we can clear up

3 for those who have taken their time off from today or are

4 you fairly clear as to when this may come up next?

5 Yes, ma'am.

6 AUDIENCE MEMBER: There was an internet

7 site that we could get updated information on the

8 meetings. Did I hear that correctly?

9 CHAIRMAN EATON: Yes, and that is --

10 MR. WHITEHILL: The internet address is

11 www.ciwmb.ca.gov, and there is a place you can click on to

12 see the dates and schedules and agendas for the Board

13 meetings.

14 AUDIENCE MEMBER: Are these all at 10:00

15 a.m.?

16 CHAIRMAN EATON: No. They generally start

17 at 9:30. We normally take up matters that have been

18 continued first, but that is always subject to change. So

19 counsel, I don't believe you have a sufficient record for

20 continuing the motion.

21 Without objection, the matter will be

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22 continued to October 20th. Without objection, so shall be

23 ordered.

24 Thank you, all, and now a well-deserved

25 short break until -- lunch until 1:45. That will be 20

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1 minutes, and I think that will be fine and we'll take up
2 with Item Number C.

3 (Lunch recess taken.)

4 CHAIRMAN EATON: Welcome back to the
5 September 22nd California Integrated Waste Management
6 Board meeting. Recognize there is a quorum present.

7 Mr. Pennington, are there any ex parte
8 communications that need to be reported?

9 BOARD MEMBER PENNINGTON: No, sir.

10 CHAIRMAN EATON: Okay.

11 BOARD MEMBER JONES: None for me,
12 Mr. Chairman.

13 BOARD MEMBER MOULTON-PATTERSON: None.

14 CHAIRMAN EATON: Ms. Moulton-Patterson?

15 BOARD MEMBER MOULTON-PATTERSON: No.

16 CHAIRMAN EATON: None for me.

17 Item Number C, it should be noted for the
18 record that due to previous legal opinions, Mr. Roberti
19 will not be participating in this item.

20 MS. TRGOVCICH: Good afternoon, Chairman
21 Eaton and Members. This item is consideration of approval

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22 of the 1997 rigid plastic packaging all-container and
23 polyethylene terephthalate recycling rates. With me today
24 are Elana Yates, who will be operating the computer, and
25 Sue Engel in the audience to provide any answers that you

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1 may have on questions in terms of the information we will
2 be presenting.

3 We will be presenting two recycling rates
4 for calendar year 1997. This was stated in the title, and
5 overall recycling rate for all rigid plastic containers.
6 And this is what we call an all-container rate and a
7 recycling rate for just those rigid plastic beverage
8 containers. The overall recycling rate accounts for a
9 variety of containers holding products such as laundry
10 detergents, motor oil, soft drink containers, cosmetics,
11 food. The other recycling rate includes primarily
12 beverage and drink containers made from polyethylene
13 terephthalate or what we call PETE.

14 As you may recall, RPPC containers are
15 generally those containers that are made entirely of
16 plastic, hold between eight ounces and five gallons, and
17 are capable of multiple closure. This will be the third
18 annual calculation for the two RPPC recycling rates which
19 are required by statute. The first rates were adopted in
20 January of '97 for the 1995 compliance years. In January
21 of '98, the Board adopted rates for calendar year 1996.

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22 And today we are going to recommend that the Board adopt

23 rates for calendar year 1997.

24 I would like to note that this item is

25 solely related to the adoption of the rates themselves.

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1 There is a title that's been placed on the October Board
2 agenda that will provide the Board Members with options
3 for pursuing actions around product manufacturers, if that
4 is your desire, with respect to the rates you are adopting
5 today.

6 What I'm going to do is provide you with a
7 very brief overview of the recycling rates as calculated,
8 and then if you have any additional questions, I can
9 provide further information with respect to the
10 methodologies that were used with respect to the actual
11 numbers that were derived from the Department of
12 Conservation and their numbers, et cetera.

13 I would like to point out that this item
14 has been on the Board's agenda for many months now, and
15 located on our web site there is a trial web, if you want
16 to call it, for plastics. And under that is the rigid
17 plastic packaging container page, and the rates for both
18 the all-container and PETE rates have been posted on that
19 web site since April.

20 In 1997, the PETE rate was calculated to be
21 33.2 percent. According to statute, this rate must be 55

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22 percent or higher in order for companies to use this as a
23 compliance option. Remember the statute assumes that if a
24 compliance rate or recycling rate for all-containers, as
25 well as for PETE containers, is above a certain threshold

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1 percentage, then all product manufacturers are deemed to
2 be in compliance, and thus the Board would not pursue any
3 additional response on the part of those product
4 manufacturers.

5 If the compliance rate or recycling rate
6 falls below that threshold percentage, then the Board has
7 the option to impose a number of requirements on product
8 manufacturers to demonstrate individually they have met
9 the specified minimum content rates. So for 1997, the
10 PETE rate fell below the 55 percent statutory threshold.
11 You will see that there is a trend that we have been
12 tracking in terms of the PETE recycling rates from 1995 to
13 1997. '97 represents once again a continued downward
14 trend in the overall rate itself.

15 The next slide shows the all-container or
16 overall recycling rate for rigid plastic packaging
17 containers. That rate was calculated with a midpoint of
18 21.9 percent. This is within the range of 20.4 percent on
19 the low end and 23.5 percent on the high end. According
20 to statute once again, the threshold, in terms of the
21 recycling rate for the all-containers, for all rigid

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22 plastic packaging containers, must be 25 percent or
23 higher. So even given the range that's presented on the
24 right-hand side of this slide up on the monitor, you will
25 see that that rate falls below the 25 percent statutory

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1 threshold. This again represents a continued downward
2 trend in the recycling rate for RPPC.

3 CHAIRMAN EATON: Ms. Trgovcich, if I could
4 interrupt you for one second. Senator Roberti has an
5 item, as I mentioned earlier, with regard to this item.
6 And he's been able to get back from making several phone
7 calls, so he has an expanded statement, I believe.

8 BOARD MEMBER ROBERTI: Actually, it's not
9 too terribly long. Thank you Mr. Chairman. At the
10 present time -- I would like to enter into the record at
11 the present time my wife owns stock in several companies
12 that may be subject to the RPPC program.

13 While I cannot determine definitively at
14 this time whether or not the regulations of the Fair
15 Political Practices Commission would prohibit my
16 involvement with this decision, it's within the realm of
17 possibility that the effect of this decision could result
18 in a financial effect on one of those companies.

19 Therefore, I am not going to participate in
20 the consideration of this matter in order to avoid the
21 possibility of a conflict of interest.

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22 Thank you.

23 CHAIRMAN EATON: Thank you, Senator.

24 Ms. Trgovcich.

25 MS. TRGOVCICH: Continuing on, with

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1 respect to the all-container recycling rates, as you'll
2 recall from my introduction, the Board has seen many of
3 the numbers associated with the calculation of the two
4 rates from the Department of Conservation's Division of
5 Recycling. For calendar year 1997, the Department of
6 Conservation conducted a survey of both processors as well
7 as reclaimers.

8 To take you back for a moment, there was an
9 issue raised around the calculation of the 1996 rate that
10 wherein the numbers reflected by the reclaimers in the
11 industry were significantly different from the numbers
12 reported for the processors. Thus, the Board agreed for
13 the 1997 rate to benchmark that rate with a survey of
14 reclaimers. The Department of Conservation conducted both
15 of those surveys.

16 Interested parties that have met on a
17 periodic ad hoc basis for the last several years
18 concluded, prior to the completion of those surveys, that
19 if the benchmark number for the reclaimer survey was less
20 than 10 percent, then we would accept those numbers and
21 assume that the benchmark validated the processor number

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22 that's the basis of the methodology for the calculation of
23 the rate. If that number was anywhere between 10 and 15
24 percent different from the processor number, then the
25 interested parties who are reflective of government,

1 industry, and environmental organizations agreed that
2 those numbers would then have to be further evaluated and
3 the discrepancies would need to be identified and
4 resolved; and if the benchmark number had a greater than
5 15 percent discrepancy from the processor number, then we
6 would assume that there was some sort of an error in terms
7 of the processor methodology and we would revisit the
8 overall approach.

9 The benchmark number that the Department of
10 Conservation calculated, which I believe is in slide nine
11 of the presentation, will show you that the initial
12 difference was calculated to be less than a five-percent
13 difference between the processor number and the reclaimer
14 number. And we feel that that was a very good
15 approximation and a very good survey sample.

16 At the interested parties' meeting
17 subsequent to the calculation of the rates, there was
18 significant controversy raised from around that benchmark
19 reclaimer number. We spent considerable hours with the
20 interested parties as well as the American Plastics
21 Councils' contractor R.W. Beck, to try to resolve the

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22 differences between the reclaimer number that the

23 Department of Conservation had calculated and the number

24 calculated by R.W. Beck.

25 It was determined that there were

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1 discrepancies that could not be identified. However,
2 taking the worst case, scenario, assuming that all of the
3 items identified by R.W. Beck were in fact true, that
4 would show a swing in the number, but the number would now
5 be six percent greater than the processor number, and thus
6 very much within our 10-percent range initially identified
7 by interested parties.

8 So the item before you today is the
9 adoption of the two rates, the PETE recycling rate. And
10 if we could take it back to the first couple of slides, we
11 can put those numbers on the board for you, which was 33.2
12 percent, and the all-container recycling rate at 21.9
13 percent with a range of 20.4 percent to 23.5 percent.

14 I would be happy to discuss any items
15 pertaining to the methodology, prior Board actions on this
16 item if you would like.

17 CHAIRMAN EATON: Any questions of
18 Ms. Trgovcich? Okay.

19 I don't believe I have -- do we have any
20 speaker slips? Perhaps I should just announce for those
21 of you who may have arrived. If you wish to speak on any

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22 item, if you would fill out one of these white slips that

23 Mr. Hastings has kindly decided to show off for purposes

24 of example, but also for purposes of actually speaking.

25 One slip -- I stand corrected -- Lance

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1 Hastings, Grocery Manufacturers of America.

2 Mr. Hastings.

3 MR. HASTINGS: Thank you, Mr. Chairman and
4 Members of the Board, and welcome to the newest Member of
5 the Board. I'm Lance Hastings with the Grocery
6 Manufacturers of America, and not to comment necessarily
7 on the resolution that's before you, as we are a member of
8 the interested parties' group referred to by
9 Ms. Trgovcich, but to say that the effect of a certified
10 rate that is below the statutory floor may have a
11 tremendous effect on our members that are the actual
12 product manufacturers that are subject to the
13 compliance.

14 We are concerned about the second year of
15 the compliance regimen, and it appears to be likely as a
16 result of certifying this rate at a level that you are
17 today, and with the 1996 compliance year almost concluded,
18 not quite concluded but almost, we would be concerned
19 about this Board embarking on a compliance scheme for the
20 following year, 1997, without some further review
21 regarding how that compliance process went this last year,

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22 what some feedback from product manufacturers may be to

23 help make that process smoother or better for the 1997

24 compliance year.

25 We share a concern, I think, in that 1997

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1 rate, looking at the year 2000 as the compliance year
2 where we have to go back and look at our books. Sometimes
3 three years in arrears is a difficult task to be sure.
4 And I don't want to get too far afield and start talking
5 about those compliance issues if they're going to be taken
6 up at a later date, but in terms of the cooperative spirit
7 between the Waste Board and the regulated community about
8 the 1996 recycling rate and compliance requirements, we
9 would like to have a similar relationship before we embark
10 on future compliance for 1997.

11 CHAIRMAN EATON: Thank you, Mr. Hastings.

12 MR. HASTINGS: Thanks.

13 CHAIRMAN EATON: Any questions? Okay.

14 Perhaps -- when are we having -- you mentioned in October
15 we would be bringing back the '96 items?

16 MS. TRGOVCICH: There will be numerous
17 items on the October agenda with respect to calendar year
18 '96.

19 CHAIRMAN EATON: Correct.

20 MS. TRGOVCICH: There will be items
21 surrounding compliance agreement for those companies that

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22 were identified to be out of compliance for that calendar
23 year. Those compliance agreements will be presented to
24 the Board for approval.

25 In addition, the Board will consider the

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1 other actions that the staff has taken around the other
2 categories of certificates for that compliance year, those
3 product manufacturers that either submitted incomplete or
4 questionable information, those that didn't respond, et
5 cetera.

6 CHAIRMAN EATON: Do you think that -- Board
7 Members, I know we've had some difficult procedural
8 problems with some of these items, and staff has worked
9 diligently, sometimes almost against the stream basically
10 to bring these here, that it might be helpful to have a
11 discussion publicly, if not at that October meeting but
12 maybe subsequently in October or December, about some of
13 the complications we've had with compliance, either the
14 staff itself or our own internal -- I know we've had
15 proprietary kinds concerns that have been raised and go
16 back. If we could perhaps, and subsequent to October, to
17 separate that and maybe bring back something in a
18 reasonable time, but no later than, let's say, February,
19 an agenda item for discussion purposes and maybe work with
20 the interested parties to kind of bring that to fruition
21 in how we frame those issues.

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22 MS. TRGOVCICH: We certainly would be very
23 happy to do that and would benefit greatly from that. I
24 would suggest that perhaps you would like to have that as
25 a companion item to the October item, which would be the

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1 follow-up to your action today, is now what do we do now
2 that the rate is below -- the recycling rates are below
3 the 25 percent and 55 percent thresholds.

4 There will be an item before you soon
5 because, as Mr. Hastings indicated, part of manufacturers
6 have a hard time keeping these records on hand for a long
7 period of time, and so it would be beneficial to have that
8 discussion perhaps prior to you considering your next
9 steps around the '97 compliance year. And we would like
10 to see that item come to the Board in the October time
11 frame in order to make manufacturers -- let manufacturers
12 know how long they need to maintain their records.

13 CHAIRMAN EATON: I was just trying to be
14 reasonable so it wasn't more of a burden on the staff on
15 this assignment, but if you think there can be some items
16 brought quicker with regard to the problems or hurdles
17 that we've had to overcome with regard to the compliance
18 mechanism before deciding on the '97 steps, that would be
19 fine as well, so if you could do that. You think you can
20 do it?

21 MS. TRGOVCICH: Yes. That would be my

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22 preferred approach.

23 BOARD MEMBER JONES: Mr. Chairman.

24 CHAIRMAN EATON: Mr. Jones.

25 BOARD MEMBER JONES: Just one question on

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1 that. We've got two meetings in October.

2 CHAIRMAN EATON: October 20th and I think a
3 later one, 27th-28th maybe.

4 BOARD MEMBER JONES: I think -- are we
5 going to hear this item in Sacramento?

6 MS. TRGOVCICH: It was proposed to hear it
7 in Sacramento. It could be that you could split the two
8 items.

9 BOARD MEMBER JONES: I think it's easier to
10 hear it in Sacramento rather than make everybody go down
11 to San Luis Obispo. So if we're going to do that, let's
12 do it here.

13 CHAIRMAN EATON: So that would be the 20th
14 of October. Was that something -- Mr. Hastings, did you
15 hear that? I thought it was similar to the request that
16 you had made. Maybe I'm mistaken.

17 MR. HASTINGS: To do what on the 20th?

18 CHAIRMAN EATON: Do what on the 20th?

19 MR. HASTINGS: Yeah.

20 CHAIRMAN EATON: That we would be taking up
21 a discussion regarding some of the hurdles, some of the

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22 complications, some of the problems we've encountered with
23 trying to resolve the compliance issues as it relates to
24 '96 prior to embarking upon the '97 discussion in terms of
25 compliance. But maybe Ms. Trgovcich can sort of set forth

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1 some of the other items that she may have also been
2 thinking in her mind.

3 MR. HASTINGS: I think --

4 CHAIRMAN EATON: Generally.

5 MR. HASTINGS: Both at one time, embark on
6 a compliance scheme on '97 and have the discussion about
7 the problems with 1996.

8 MS. TRGOVCICH: I would propose that the
9 discussion around 1996 would occur prior to the taking up
10 of what to do about '97.

11 MR. HASTINGS: And that occurs in the
12 October meeting. We would have to do a lot of work before
13 then, but thank you.

14 BOARD MEMBER JONES: Mr. Chairman.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: I would like to move
17 adoption of Resolution 1999-223, the consideration of the
18 approval of the 1997 rigid plastic packaging container
19 all-container PETE recycling rates at -- on the overall at
20 21.9 percent and on the PETE at 33.2 percent.

21 BOARD MEMBER MOULTON-PATTERSON: I'll

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22 second.

23 CHAIRMAN EATON: Mr. Jones moves and

24 Ms. Moulton-Patterson seconds that we adopt Resolution

25 1999-223 regarding consideration of approval of the 1997

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1 rigid plastic packaging container (RPPC) all-container and

2 polyethylene terephthalate (PETE) recycling rates. I

3 haven't had a good time with names today.

4 (Laughter)

5 CHAIRMAN EATON: I can tell you that.

6 Madam Secretary, please call the roll.

7 BOARD SECRETARY: Board Members Jones.

8 BOARD MEMBER JONES: Aye.

9 BOARD SECRETARY: Moulton-Patterson.

10 BOARD MEMBER MOULTON-PATTERSON: Aye.

11 BOARD SECRETARY: Pennington.

12 BOARD MEMBER PENNINGTON: Aye.

13 BOARD SECRETARY: Chairman Eaton.

14 CHAIRMAN EATON: Aye.

15 And at the same time, Ms. Trgovcich, we'll

16 be clear on the agreement in terms of the parties -- and

17 I'm sure the interested parties can be very helpful with

18 whatever issues they may also like to have in discussion.

19 Okay.

20 Thank you. Next item. Item Number 70,

21 captive insurance, Ms. Julie Nauman.

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22 MS. NAUMAN: Mr. Chairman and Members, for
23 the record, Julie Nauman, Deputy Director, Permitting and
24 Enforcement Division.

25 This item is consideration of captive

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1 insurance as an acceptable financial assurance
2 demonstration. I wanted to offer a few introductory
3 comments before Richard Castle of the P and E staff makes
4 the presentation. Also with us today is Mr. Kurt Ramey
5 from KPMG, who is a partner manager with that firm who has
6 been in contract with us to assist us in the analysis of
7 this policy item.

8 This item addresses a very important policy
9 issue regarding financial assurance mechanisms for closure
10 and post-closure costs for landfills. Use of insurance as
11 an acceptable financial assurance mechanism actually has a
12 very long history with this Board, and it's detailed in
13 the chronology that is included in your item as Attachment
14 A.

15 As you'll note from that chronology, the
16 legislature has in fact addressed the issue of insurance
17 as acceptable financial assurance mechanism. In the past,
18 and most recently enacted 8715, which authorizes this
19 Board to approve the use of captive insurance as a
20 financial assurance mechanism for closure and post-closure
21 costs for landfills. In authorizing the Board to approve

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22 the use of this financial assurance mechanism, the
23 legislature, however, gave the Board fairly broad
24 discretion with respect to the structure of that program
25 and the requirements captive insurers would need to meet

1 in order to be acceptable as financial assurance to the
2 Board.

3 Following the enactment of the bill, the
4 Board did engage the services of KPMG, as I mentioned, in
5 order to assist staff in our analysis of the use of
6 captive insurance and in determining options for
7 structuring a regulatory package to implement the use of
8 captive insurance. I want to emphasize that the purpose
9 of our analysis was to ensure that the State and our
10 agents at the local level are sufficiently insured through
11 this mechanism so that there was not, in effect, a shift
12 of risk from the operator to local governments through the
13 State.

14 In meeting with the industry, you will note
15 in our packet we point out that we reached out to both
16 Waste Management and to Allied, the former BFI. Allied
17 indicated that they were not interested at this time in
18 pursuing the use of a captive carrier and were therefore
19 not interested in engaging in any policy discussions with
20 us with respect to structure of the program.

21 So our comments today about our discussions

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22 with the industry really focus on our meetings and
23 dialogue, if you will, with Waste Management. During
24 those discussions, we identified a number of areas of
25 concern, including the need for quarterly financial

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1 reports and transition mechanisms in the event that there
2 would be a downgrading of the captives and best rating
3 below the prescribed A minus rating as provided in the
4 statute.

5 The primary area of concern has been and
6 continues to be our view that it's essential that the
7 captive provide a back-up mechanism to ensure that the
8 State is not put at risk in the event if the captive's
9 rating dips below the prescribed A minus rating, and we
10 would like to see this back-up mechanism if that rate
11 should drop, and that that mechanism should in fact be in
12 place at the time they make their application to use the
13 captive and then trigger at that time when the rating is
14 down graded.

15 As this dialogue continued with the
16 industry, I'm sure most of you are aware of other events
17 that have occurred within Waste Management that have
18 caused the staff a significant amount of concern. These
19 changes include changes in the operations of Waste
20 Management, the stock prices have fallen, there's been
21 considerable change that's occurred in top management of

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22 Waste Management, Moody's has downgraded their bond
23 rating, and just recently A.M. Best placed their captive
24 insurer rating on what they call "watch" and are going
25 through a review.

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1 Because of these changes and circumstances
2 surrounding both Waste Management and their captive, NGIC,
3 staff at this time is not in a position to recommend to
4 the Board that you move forward with the implementation of
5 the captive insurance program for Waste Management, and I
6 emphasize at this time. In addition, the Board may recall
7 that last year you adopted a resolution, which is also
8 included in the package, that authorized Waste Management
9 to continue to use its captive insurer to provide
10 financial assurance mechanisms for its closure and
11 post-closure assurances for the facilities within
12 California at the time. And in that resolution, you
13 indicated that at such time as the legislation was
14 enacted, that we would come back and revisit that, but in
15 the meantime they would have this kind of extension of
16 time during which they could offer another captive.

17 It's part of our recommendation that based
18 on the circumstances that I've just described that are
19 occurring within this company and its captive, that you
20 give strong consideration to right now transitioning them
21 from that captive to more traditional financial assurance

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22 mechanisms, and we'll be talking more about that during

23 the course of the item.

24 With that as background, I'd like to now

25 turn it over to Richard Castle to walk you through the

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1 highlights of our staff analysis, then we'll ask Kurt
2 Ramey from KPMG to summarize for you the work that they
3 performed for us. And I assume there will be some public
4 testimony, and I would then like an opportunity to be able
5 to respond to those comments as you consider action.

6 Thank you, Mr. Chairman.

7 CHAIRMAN EATON: Mr. Castle.

8 MR. CASTLE: Good afternoon. My name is
9 Richard Castle. I work in the Board's Financial
10 Assurances Section, and if I could just add a little bit
11 of meat to what the financial assurances program is.

12 The Board allows a number of types of
13 financial assurance demonstrations. We have a trust fund
14 and an enterprise fund, which are mechanisms wherein the
15 operator builds up an actual cash reserve to cover the
16 closure and/or post-closure maintenance of the facility.
17 That is funded over the life of the facility.

18 The Board also allows letters of credit,
19 surety bonds, which are very similar except the letters of
20 credit are issued through a bank. A surety bond is issued
21 through an insurance company. Both of those

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22 demonstrations basically set out that if the operator
23 fails to do something, we have a third party to go to the
24 Board to obtain the money that is necessary to perform
25 whatever the action is, in this case closure and

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1 post-closure maintenance.

2 The Board also has a pledge of revenue
3 that's allowed to public operators to cover their
4 post-closure maintenance costs, and that's where we secure
5 from the public operator, cities and counties, a secure
6 revenue source that is adequate to cover their annual
7 costs for post-closure maintenance. They pledge that
8 under contract to the State, that that money will be
9 available first for post-closure maintenance costs.

10 The next thing we have is termed as a
11 financial means test, and that can also be in conjunction
12 with the corporate guarantee. And that's where a private
13 operator is able to show by their audited financial
14 statements that they are definitely capable of performing
15 post-closure maintenance at the site, and there's no fund
16 that has to be set up upon that mechanism. It's just
17 showing their financial ability under this strict
18 financial test, and then they present that test to us, as
19 the State, and we take that as a financial assurance that
20 they are capable of performing post-closure maintenance,
21 as they see fit, and the reason we'll take that one,

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22 although it may sound like it's a little loose, is that it
23 is stringent enough that it's been determined by USEPA,
24 that developed the test, that should an operator begin to
25 fail financially, it will show up on their financial test

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1 well before they are also unable to gain another financial
2 mechanism like a letter of credit or a surety bond. So
3 they're still secure as far as the state collecting an
4 assurance.

5 Julie has already gone through the basic
6 chronology, so you also have that. It's quite lengthy, as
7 you can see in the first attachment to the item. To just
8 skip through the high points, back in 1992 we had SB 610,
9 which required the Board to accept any federal assurance
10 financial mechanism, so we had to consider all the items
11 that were listed out in the USEPA Subtitle B requirements.
12

13 In 1993, about the time that we were
14 gearing up to do a regulation package to do just that, the
15 Board had AB 1220 come along that said consolidate all
16 your financial assurance. Actually, it said consolidate
17 all your regulations with the Water Board's regulations,
18 and that was the vehicle we used to put in the remaining
19 item, which was closure insurance. We had all the other
20 types of financial demonstrations already available.

21 In '97, in July of '97, we completed that

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22 process. It was quite lengthy, but once you're into it,
23 you've got to get through it to get the closure insurance
24 into it. That's what we're concerned about here. That
25 was back in '97, July of '97.

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1 A year we dealt with Waste Management, who
2 was the operator that we had at the time, and tried to get
3 them into compliance. They were working with the
4 Department of Insurance to bring their insurer into
5 compliance with what our regs say currently, which is if
6 you have an insurance demonstration, your insurer must be
7 approved by the California Department of Insurance. That
8 didn't pan out for Waste Management.

9 Subsequently, July of last year, July of
10 '97, we had AB 715 amended to allow the Board to directly
11 accept captive insurers, which was finalized during '98
12 and became effective in January of this year. Since its
13 effective date, the Board has been working with KPMG, the
14 Board and Board staff, to determine how to best modify the
15 regulations, to use the new statutory authority that the
16 Board has, and we've also dealt with Waste Management
17 regarding their concerns, our concerns with captive
18 insurance and solicited their input on how we could be
19 satisfied that we have an assurance that's equivalent to
20 the other financial demonstrations.

21 The crux of the 8715 statutory changes is

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22 that the captive insurer, in order to be acceptable, must
23 be in full compliance with federal requirements, must be
24 domiciled in the United States or eligible to provide
25 coverage in the United States, it only provides coverage

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1 to the parent company -- and we'll bring up this issue
2 again later in my talk.

3 The next thing -- so they have to be in
4 full compliance, they have to be domiciled in the United
5 States, they can only provide coverage to the parent
6 company, they must maintain an A minus rating from A.M.
7 Best. A.M. Best is an independent insurance company
8 rating organization, and that's what's identified
9 specifically in the statute, and the Board can require
10 from the insurer an audit report and an actuarial report,
11 but then we would have to go through that to see whether
12 we're satisfied with that.

13 In our process of determining what kind of
14 rate package we were going to do, all these things were
15 considered. It got to be kind of a question of do we ask
16 for something else from them to be ushered, like a backup
17 mechanism which was mentioned, or do we ask for a
18 regulation package that kind of makes the Board, in
19 meeting Department of Insurance, so we can review that
20 actuarial report and that audit report from the insurance
21 company.

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22 If I can go ahead and skip now to a minor
23 definition here about bonds, letters of credit and
24 insurance, we need to understand that the Board and USEPA
25 allow surety bonds, and surety bonds say that if an

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1 operator fails to perform, then we can draw on that
2 insurance coverage. The surety bond is a type of
3 insurance coverage.

4 A letter of credit is, like I said at the
5 very beginning, very similar to the surety bond in the
6 fact that the bank says this company is capable of doing
7 what it says it's going to do and that they have the money
8 to do that. If they fail to do that, we can go to the
9 bank and draw on that letter of credit, and then the Board
10 can perform that.

11 The difference between those two and the
12 insurance for closure is that insurance for closure is
13 very similar to the insurance on your home in the fact
14 that if closure happens, it's insuring the insurance
15 company will pay the closure. It doesn't say if the
16 operator fails. It says the insurance company is liable,
17 and if we want to refer to the reg sections on that in
18 Title 40 of the Code of Regulations, the surety bond
19 specifically says under the terms of the bond assurity
20 will become liable on the bond obligation when the owner
21 or operator fails to perform as guaranteed by the bond.

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22 The difference again being that the insurance coverage
23 understand 258.74 says the policy must also guarantee that
24 once closure or post-closure care begins, the insurer will
25 be responsible for the paying out of funds for the owner

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1 or operator. There's more to that, but that's the crux of
2 it. I don't want to read the whole section to you.

3 Our bond requirement is the same
4 essentially as the federal requirement, so we're in
5 compliance there. We have to also keep all of our other
6 requirements in compliance to maintain our authority under
7 the federal program.

8 The next piece here of the discussion is
9 that all of our financial assurance demonstrations, the
10 ones I mentioned earlier, all of them accepted by the
11 Board provide the security of either a third party
12 maintaining the financial integrity of the demonstration
13 or the use of a stringent audit analysis of the provider
14 of the assurance. Both of these reduce the risk to the
15 Board of default to an acceptable level, so we can feel
16 comfortable that we have a true financial assurance.

17 All of the accepted demonstrations also
18 provide protection associated with the unlikely
19 simultaneous financial failure of at least two independent
20 entities or a sensitive trigger of the provider's
21 financial downturn.

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22 The trigger is where I was talking about
23 the financial means test. We'll know well before that
24 company has any serious financial problems that they can't
25 pass the test. They can still go out and get another

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1 financial demonstration. It doesn't push them off the
2 slope, that they're starting to fail. We don't push them
3 over the edge. I think we now want letters of credit or
4 assurity bonds. It also doesn't get us in a situation
5 where we don't have an actual financial assurance
6 demonstration.

7 That leads us to Waste Management's captive
8 insurer, which is National Guarantee Insurance Company.
9 It's the only one we have before us. It's from
10 information told to us by representatives of NGIC and
11 Waste Management. They have nationwide, because they
12 provide this on a national scale, approximately a billion
13 dollars in exposure for closure and post-closure. They've
14 also told us that that's backed up by the State of Vermont
15 by about \$300 million in assets. While of that \$300
16 million, we asked them what's that break down to. They
17 told us they have approximately \$146 million promissory
18 note from Waste Management. Then they said there's
19 approximately \$150 million of letters of credit from Waste
20 Management that are backing the insurance company. The
21 remainder of the \$300 million is in cash and other

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22 securities that they didn't identify specifically.

23 Our concern there, we don't expect an

24 insurance company, if they've got a billion in exposures,

25 to have a billion in assets. That's not the way insurance

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1 works. Our major concern, when we look at what they tell
2 us about it and what their statements say about the
3 insurance company is that they have zero dollars in claims
4 reserves. They say they have zero in claims reserves
5 because they have zero claims.

6 That gets us back to are we accepting
7 insurance for closure insurance or accepting insurance as
8 surety bond? Also, we've got a muddy issue there. They
9 say they'll never make a claim and they don't ever intend
10 to make a claim in the future. In fact, their policy
11 language says that the insurance carrier -- insuring
12 agreements that they provided to us say that under both
13 closure and post-closure maintenance coverage, that the
14 insurer will pay on behalf of the insured where claim is
15 first made during the effective policy period and the
16 insured has failed to itself pay such expenses.

17 When we asked our Department of Insurance
18 to look at this back in '97, they said under California
19 Insurance Law, that's a surety bond. It's not closure
20 insurance. We're dealing with this issue about whether
21 we're talking about California law or whether we're

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22 talking about another state's law. It really -- it starts

23 getting quite muddy as we go through these things.

24 We want to have an assurance that the State

25 of California knows what we have to protect the State, the

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1 taxpayers, and we also want to make sure that we're not
2 putting anybody at undue disadvantage by requiring
3 something too stringent of them.

4 That -- I'll answer any questions that you
5 have on those items, if there are any. I want to go ahead
6 and jump into the next thing. It's not the most recent
7 thing, but it's rather recent. We found to be a concern
8 of the conflict between the federal statute and our new
9 8715 changes to the PRC, and that is that the federal
10 statute requires that each policy must contain a provision
11 allowing assignment of the policy to a successor, owner or
12 operator. It's very clear and very distinct in -- that's
13 a complete quote from the federal requirements under 40
14 CFR for closure insurance.

15 The conflict that under 43601, the changes
16 to the PRC, it states clearly that the insurance carrier
17 only provides financial assurance to the operator that has
18 established the insurance as a form of self insurance and
19 does not engage in the business of marketing, brokering or
20 providing insurance coverage to other parties. The
21 federal statute says they have to provide it if they sell

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22 their facility or it transfers to another owner. They
23 have to provide that coverage to the successor owner. Yet
24 our statute says you can't do it because you can only
25 provide it to yourself, and that's the way captive

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1 insurance would work anyway. You can only provide captive
2 insurance to yourself.

3 We have a conflict there that needs to be
4 considered in how we're going to, if we're going to allow
5 captive insurance.

6 From there we go to the recommendation
7 which Julie has already read to you. If you would like me
8 to re-read the recommendation.

9 CHAIRMAN EATON: I think we would like to
10 hear the testimony. I just have one quick question. What
11 was it, \$146 out of \$300, and \$150 was from letters of
12 credit, \$146 was a promissory --

13 MR. CASTLE: \$146 was a promissory note
14 from Waste Management, and they clarified that. For some
15 reason, we were in error with those numbers.

16 MS. NAUMAN: Mr. Chairman, I was wondering
17 if you would like to hear from Kurt Ramey (inaudible).

18 CHAIRMAN EATON: Yes.

19 MR. RAMEY: Thank you, Mr. Chairman. I'm
20 Kurt Ramey. I'm a partner in KPMG. I'm responsible for
21 state and local government consulting in southern

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22 California, and I've been working in the financial

23 advisory capacity with the IWMB for several years.

24 We were asked to look through the statute

25 of AB 715 and help sort out some of the issues. And the

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1 key thing that we looked at was what position was the
2 State Waste Board, and more importantly, local governments
3 who were sort of on the battle line. If there's ever a
4 problem, local governments were impacted first. Where
5 were they prior to 715, where could they be post-715, to
6 see if there's a transfer risk. Very important part of
7 the work that we did.

8 It's a very important part because we're
9 talking about big numbers and we're talking about long
10 periods of time. We're talking about hundreds of millions
11 of dollars that could potentially shift from third party
12 vehicles into captives, and we're talking about facilities
13 that have closure and post-closure responsibilities that
14 are out 30, 40, 50, 60 years, and especially the large
15 landfills that are being permitted today. So we're
16 talking about long periods of time.

17 When you look at back to where the major
18 corporations were of 30 or 40 years ago, we've seen a lot
19 of change. We've seen a lot of change. There's a lot of
20 things that happened in the course of generations, and we
21 think that's very important in your consideration today.

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22 The fundamental change in the risk profile
23 is that in the general financial assurance vehicles for
24 closure that Mr. Castle identified, there is a promise by
25 a company to do something, and then there's a third party

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1 standing behind that promise. In this case, we've
2 effectively moving a captive that is very closely related
3 to the parent into the position. There's not an external
4 third party. In fact, it is such a close relationship
5 that when you talk to A.M. Best, a key criteria for the
6 rating and in this case an A minus rating that they're
7 granting, is the guarantee of the parent of the
8 obligations of the captive.

9 In this particular case where the NGIC is
10 under watch, it was placed under watch by A.M. Best, we
11 could find no action that -- or no event that occurred in
12 NGIC that triggered the move to a watch position. We only
13 saw events and circumstances that occurred in the parent
14 company -- changes in management and several other issues.
15 So if the rating -- in our opinion, it's clear that the
16 rating agencies, as they grant ratings, very, very, very
17 heavily weigh the parent guarantee. And so instead of
18 having a standalone entity and a guarantee from a company,
19 we have a guarantee from a company and then a guarantee of
20 effectively a captive. That's the element of risk that
21 we're talking about that changes from pre-715 to post-715.

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22 An A minus rating from A.M. Best suggests,
23 or actually specifies in A.M. Best's view, that the
24 captive insurance company has a very, very strong
25 likelihood of meeting long-term obligations. An A minus

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1 rating is a very strong rating, and it's tremendous that
2 that sort of rating is in the statute.

3 The real issue that we have determined in
4 this piece of statute is what happens on the day that a
5 company is no longer A minus, and if you think about the
6 length of time we're talking about -- 40, 50, 60 years --
7 and the money that we're talking about -- hundreds of
8 millions of dollars -- and the fact that an impact, a
9 major impact to a parent company can cause such a
10 downgrade, we believe that that's an eventuality that the
11 Board in the future will face and we would begin to have
12 this conversation. And that's when we were brought up to
13 Waste Management or the discussion that we participated
14 with staff on, and we were interested in their ideas on
15 what they would do in that eventuality.

16 And it's our recommendation to the Board
17 that we don't have a regulation that effectively says
18 write them a letter on that day; that we are comfortable
19 that there is something in place on that day that triggers
20 automatically because we do believe that's a very real
21 risk.

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22 Now, since the time of our conversations
23 with Waste Management, we've actually gotten to the point
24 where NGIC is under watch. We don't know what will happen
25 with the rating. They have only had this rating

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1 approximately a year, perhaps less. They're already on
2 the watch list. There was several circumstances that I
3 don't think any of us could predict, certainly I could not
4 have predicted, in Waste Management that caused this. And
5 I think that's the risk we're all dealing with, how many
6 times will this type of circumstance occur over the life
7 of this.

8 And then I think it's important to
9 recognize that again, the responsibility of the Board is
10 to set policy. The impact to much of this is straight to
11 the local government.

12 Those are my comments. I'd be happy to
13 answer any questions if you have them.

14 CHAIRMAN EATON: Any questions of
15 Mr. Ramey?

16 With regard to -- you mentioned something
17 of the parent company, in this case it was \$300 million.
18 Would it go to both the \$146 million in the sense of
19 guarantees, the impact or in the letters of credit backed
20 up? Is it for the total of \$300 million? Where that
21 would be effected?

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22 MR. RAMEY: The capitalization of NGIC is
23 closely related to Waste Management. The vehicles you
24 heard are letters of credit between the companies and
25 guarantees between the companies. It's not clear to me

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1 exactly how those vehicles are structured, and so it would
2 be actually very difficult to speculate what would happen
3 in the event of a significant downturn in Waste
4 Management.

5 There are -- I believe that it is quite
6 likely that California has the largest portion of
7 liability of the various states that allow the NGIC to
8 participate. We know that there is up close to \$200
9 million just in California alone in terms of obligations.

10 CHAIRMAN EATON: All right. I have two
11 speaker slips, Mr. Kent Stoddard from Waste Management and
12 Leo Winstead. I assume one and two or two and one.

13 MR. STODDARD: We're both together if it
14 gets that bad, I guess.

15 Kent Stoddard representing Waste
16 Management.

17 CHAIRMAN EATON: I'm sure they'll let us
18 know.

19 (Laughter)

20 MR. STODDARD: It's not a new issue,
21 captive insurance, I'm afraid, and we've been working on

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22 it for about six years. I just wanted to say that there
23 were a couple of points that were made today by staff that
24 we are in total agreement, and that is a need for a
25 transition mechanism in the event that our company for

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1 some reason is downgraded below an A minus rating.

2 The second one are early warning mechanisms

3 so that California is continually informed about all

4 material events related to the health and stability of

5 both Waste Management and NGIC. Just by way of

6 background, I think it gets lost along the way. Waste

7 Management has been using NGIC in California for ten

8 years. This is not a new mechanism that we're trying to

9 qualify. We're trying to maintain it.

10 We're using it right now for six -- five

11 hazardous waste facilities and six solid waste facilities,

12 and we checked this morning and the number was \$180

13 million worth of coverage for California facilities.

14 About \$130 of that is on the solid waste side. And I'm

15 not sure how that relates to other states. We use NGIC in

16 about 20 other states, and I frankly don't know if

17 California is the biggest or among the largest in terms of

18 our use at NGIC.

19 Again, we only write policies for waste

20 management facilities. We don't write commercial

21 insurance. We have about \$300 million in assets. It was

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22 incorrectly stated that some of that is a letter of credit
23 from Waste Management. It is not. That's a letter of
24 credit from an actual bank. We do have a note from Waste
25 Management.

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1 I guess the main thing -- our main message
2 today would be throughout all these years that we've been
3 working on this issue. The Waste Board has been very
4 patient I think as we try to work through difficult issues
5 on the continued use of this.

6 Your last action was resolution last year
7 that allowed us to continue to use NGIC while we pursued
8 legislation, AB 715 by now Senator Figueroa. That
9 legislation was passed. It was passed overwhelmingly 38
10 to zero in the Senate, 70 to 2 in the Assembly. It's a
11 very clear authorization to allow the use of captive
12 insurance in California, and it also places some very
13 strict parameters on the use of that mechanism.

14 It's been mentioned before you have to have
15 an A minus rating, an excellent rating by A.M. Best. It
16 has to be domestically domiciled. You have to provide
17 annual financial reports and actuarial opinions. We
18 believe that is the best, the most restrictive statute in
19 the country relating to the use of captive insurance for
20 this particular financial mechanism.

21 I'm going to ask Leo Winstead to talk a

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22 little bit about some of the specific issues that came up
23 today, but I did want to point out captive insurance is
24 not a strange or unique animal. Virtually every Fortune
25 500 company has a captive insurance company. Over 420

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1 captives are licensed and regulated by the State of
2 Vermont. That Vermont program has been in existence since
3 1981. Since that time, there has never been an unpaid
4 claim by any captive insurance company. It has an
5 absolute 100 percent perfect record in the State of
6 Vermont as it relates to the regulation of these types of
7 corporations and entities.

8 That is certainly not the case in
9 California for admitted insurers. There have been
10 failures of companies. There have been unpaid claims, so
11 what we're dealing with is a very common mechanism. I
12 think about 20 percent of all insurance written in the
13 United States is written by captive insurance companies.

14 I think what we're asking today is the
15 ability to continue to work with the Board to try to come
16 up with implementing regulations that deal specifically
17 with this issue of a transition mechanism and specifically
18 with the issue of early warning mechanisms so that, in
19 fact, California will allow captive insurance and will in
20 effect be one of the most secure financial mechanisms that
21 would be available.

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22 And I did want to pass out just a list of
23 some of the companies that use captive insurance
24 mechanisms.

25 Leo Winstead, I'll just give you a quick

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1 background. He is a consultant to Waste Management. He's
2 actually an employee and Vice President of Shares, Inc.
3 which kind of specializes in the monitoring of captive
4 insurance companies, insurance mechanisms generally, and I
5 think he's probably the best prepared to speak to some of
6 the specifics, both in terms of the level of regulation
7 that occurs on a captive insurance company by the State of
8 Vermont, as well as some of the specific monitoring issues
9 related to a company and how the financial resources are
10 structured.

11 Again, one clarification is the reason we
12 don't have loss reserves, there's never been a claim. No
13 insurance company is required to post loss reserves absent
14 a claim. What we have in fact and instead is \$300 million
15 worth of surplus that's available in the event that there
16 is a claim against NGIC.

17 CHAIRMAN EATON: Any questions? I assume
18 you're through. I don't want to rush you through.

19 MR. STODDARD: The only thing I would add,
20 there has been a lot of concern -- this was raised by the
21 gentleman about the financial health of Waste Management

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22 and what has happened since the stock took a serious nose

23 dive a little bit ago, and I did want to put that into

24 perspective.

25 CHAIRMAN EATON: I notice you pulled out

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1 your old suits.

2 (Laughter)

3 MR. STODDARD: Excuse me, Mr. Chairman.

4 This is a new suit.

5 (Laughter)

6 MR. STODDARD: The problem with the stock,

7 and it did take a very serious dive, is one of -- it's a

8 shareholder issue. The company in 1998 made \$1.82 per

9 share in earnings. We projected in 1999, and the Wall

10 Street projected, that it would make about \$3.00 a share.

11 In fact, now it looks like we'll make between \$2.65 and

12 \$2.70. And that's a significant shortfall, but it's 46

13 percent more than the company made in the previous year.

14 Revenues are up, year-to-year comparison.

15 Profit margins are very good. Cash flow is better. The

16 company is earning more money today than it did in

17 previous years, but we severely disappointed our

18 shareholders and we're paying a price for that.

19 But there is a clear distinction to be made

20 between the investor reaction and the investor sentiment

21 about our company and what they consider our growth

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22 potential to be and the financial health of the underlying
23 company. And I would assert that Waste Management is
24 very, very strong today, has excellent cash flow, has a
25 very strong financial statement. I think it was

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1 appropriate that A.M. Best put us on the watch list
2 because we have a note of NGIC's depending on a note of
3 Waste Management. And given the turmoil around the
4 company, we think it's very appropriate they take another
5 look. We fully expect that we will retain an A minus
6 rating and that both NGIC and the company are very
7 healthy.

8 CHAIRMAN EATON: Any questions of
9 Mr. Stoddard?

10 BOARD MEMBER JONES: Mr. Chairman.

11 CHAIRMAN EATON: Mr. Jones. I think we'll
12 probably get back to Mr. Stoddard, I'm assuming at some
13 point, but in case we don't, we've had discussions on this
14 from the first day about what's the appropriate level. I
15 think that part of this issue coming forward, true, you
16 disappointed your investors, but it also is something
17 that -- you and I had this conversation. It's something
18 this Board has to be taken into consideration because
19 there's over \$200 million worth of liability that could
20 fall to the people of California. I'm not saying it's
21 going to, but that's what you have insurance for and we've

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22 got to look at that.

23 One of the things that bothered me, and I'm

24 the industry seat. I've dealt with this stuff for a long

25 time. One of the things that bothered me is right after

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1 the stock went down and the upper management for the
2 company made an announcement on its strategies, one of the
3 reasons that it gave for having a problem was that
4 earnings were going to be reduced, it was higher than
5 expected interest cost, decision not to change accounting
6 for maintenance and repairs -- which is just an accounting
7 issue -- add waste energy plants, and a decision not to
8 change at this time the approach to evaluating
9 recoverability of some landfill deposit accounts.

10 That sentence to me, when I read it, sent a
11 chill down my spine because they're saying we didn't
12 perform as well as we did on a cash basis. We didn't hit
13 our target because we didn't aggressively go after the
14 funds that guarantee closure post-closure. And that, as I
15 read it, that's what recoverability of landfill deposit
16 accounts are. And if it's something else and I'm
17 misrepresenting that, by all means, either now or later if
18 you find out, I'll make that apology.

19 But it tells me that if the upper
20 management of the company is relying on being able to go
21 into trust funds in 50 states and substitute captive

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22 insurance for real dollars to help the bottom line, then

23 there's a problem there, and that's what I think brings

24 this to the level of what's the appropriate level of

25 protection. Not to put Waste Management out of business,

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1 not to hurt Waste Management in its ongoing operations,
2 what's an equitable solution that lets them operate and do
3 the things they need to do but insures a level of
4 protection?

5 Now, the person that made these comments is
6 no longer there. Okay. It was Mr. Proto, who was the
7 president. He's not there. The Board accepted his
8 resignation, or whatever. But it is part of the issue, I
9 think, that we have to look at as trying to safeguard the
10 people of California.

11 I just wanted to bring that to the table as
12 part of what gets my blood -- me a little bit nervous on
13 this thing because I think there's an appropriate level of
14 both, but to just fully go down the road without those
15 kind of assurances is scary for me.

16 MR. STODDARD: I would like to respond
17 briefly, and I completely understand your level of
18 concern. My understanding of the way Waste Management
19 does its accounting is that for closure and post-closure
20 maintenance, we book all the costs as we incur them, but
21 we also accrue our liability every single year so that

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22 earnings that the company reports are net of our closure
23 and post-closure obligations. They are built into the
24 books of the company, and I think there have been times
25 when they've looked back to see if we have, in fact,

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1 overstated what those obligations are.

2 And I believe that the quote that you read
3 was had more to do with whether or not -- that the company
4 decided not to go back to review, to see if we had in fact
5 overstated, but they left those costs which they viewed as
6 higher than may actually be the case. They went ahead and
7 left them on the books.

8 So in my view, the company's incurring
9 these expenses, accruing these expenses, reflecting them
10 in their net earnings. The NGIC is completely a backup
11 mechanism available in case we ever fail to fulfill that
12 obligation. The company has never failed to fulfill an
13 obligation either under closure or post-closure
14 maintenance or under Super Fund obligations.

15 We've hauled a lot of material to sites
16 that have ended up on the Super Fund desk. We've become
17 responsible party on more than 100 sites throughout the
18 country. Never once had Waste Management defaulted on its
19 responsibility to help clean up sites that we simply
20 hauled garbage to.

21 The track record of the company is very

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22 good in meeting all of its financial obligations. We
23 think we structured an insurance mechanism that is
24 completely safe and it could even be improved by two of
25 the things that have been discussed today with transition

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1 mechanism and an early reporting system. So we would hope
2 we have the opportunity to work with the Board to develop
3 those regulations, come up with a set of regulations that
4 make this terrific and very secure.

5 CHAIRMAN EATON: Any questions? I have
6 one, but I think I should probably leave the record to
7 Mr. Winstead after he's finished.

8 MR. WINSTEAD: I'm Leo Winstead. I'm with
9 Shares, Inc. and I would like to repeat Ken's comment
10 about thanking the Board and the staff for their patience.
11 This has been around for quite a while.

12 Waste and National Guarantee do feel that
13 National Guarantee is a viable mechanism, and we think
14 we've shown that for ten years and we hope to continue to
15 use it in California. I made what might turn out to be a
16 mistake. I was trying to make some notes of a couple of
17 questions that came up and will try to answer them.

18 Mr. Jones, I've been involved in National
19 Guarantee since its inception, and to my knowledge, the
20 only time it has been used to replace a trust fund was in
21 an acquisition scenario where a small owner-operator had a

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22 trust fund. Waste Management acquired that company and
23 used National Guarantee to replace that instrument as not
24 the accrued funds for the landfill, but as the backup
25 mechanism, and where National Guarantee could not be used,

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1 it would have used a surety bond or letter of credit.

2 Mr. Eaton, I believe it was your question

3 about how the funding, the finances of National Guarantee

4 operated. The \$150 million in letters of credit, I

5 believe the bulk of them right now are with the Bank of

6 Boston. There are two with the State of Vermont

7 Department of Banking and Insurance. The Vermont

8 Department, at their whim almost, I guess at their whim,

9 could pull those letters of credit and put \$150 million of

10 cash and make it available to National Guarantee Insurance

11 Company.

12 The other major funding mechanism is an

13 intercompany note from Waste Management to National

14 Guarantee which contains a provision that if Waste

15 Management falls below certain parameters of economic

16 strength, it has to replace that note with either a letter

17 of credit or another mechanism acceptable to the State of

18 Vermont. So the financial strength of National Guarantee

19 is \$150 million readily available to the State, and at the

20 State's control, they can tell Waste Management to alter

21 that note.

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22 It was very properly pointed out by

23 Mr. Ramey that National Guarantee is on a watch right now.

24 I would like to clarify that that is standard procedure.

25 At Best there are -- I didn't check this, but I think

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1 there are upwards of a dozen or more companies on watch.
2 It's the way Best does business when they see a problem at
3 an insurance company or when they see Waste Management on
4 the front page, often enough they want to take another
5 look at the company. It does not mean they intend to
6 reduce. It does not mean they have a desire to reduce.
7 It just means they want to take another look at it.

8 I think the other question that came up
9 was -- really just ties to what a captive is, and it was
10 pointed out by Mr. Stoddard that roughly 20 percent of the
11 insurance business in the United States right now is done
12 by captives. They have been the fastest growing mechanism
13 for corporations in the United States and worldwide to
14 meet their risk management Department of Insurance needs
15 and they work. They are viable.

16 Is National Guarantee related to its
17 parent? Of course it is. If Waste Management fails, can
18 National Guarantee meet its obligations? Yes, we think it
19 can.

20 There are roughly \$800 million in limits
21 being written by National Guarantee right now in closure

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22 post-closure financial assurance. To have to pay out that
23 entire \$800 million means every Waste Management landfill
24 would have to close its doors tomorrow and never reopen
25 them again.

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1 National Guarantee has available short-term
2 \$150 million, a little bit longer term, \$313 million in
3 cash to meet what I'm going to determine realistic
4 obligations. What's really going to happen to Waste
5 Management that's going to trigger, default or failure to
6 perform, or however it's phrased, to the tune of \$313
7 million? I'm prepared to be educated on it. I simply
8 cannot see a scenario where Waste Management landfills are
9 going to shut their doors and never reopen again.

10 The reality of claims against National
11 Guarantee is very small. Vermont regulates National
12 Guarantee. There are also a number of other entities that
13 monitor National Guarantee. Waste Management itself has a
14 very, very strong vested interest in assuring that
15 National Guarantee is viable. This is one of their most
16 important risk management tools to meet their closure
17 post-closure obligations nationwide. They've never failed
18 to support the company. During this merger when there was
19 some change in the assets of the company, they had to make
20 additional letters of credit available. They did so.

21 For example, Waste Management headquarters

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22 in Oakbrook, the old headquarters, used to be an asset of
23 National Guarantee. When those buildings were sold, that
24 asset had to be replaced. Waste Management got a letter
25 of credit to replace that. There are many examples where

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1 they supported the growth of the company. Waste has a
2 vested interest in making sure National Guarantee remains
3 a viable mechanism.

4 Vermont itself, as Kent pointed out,
5 there's never been a failure -- I'm sorry, there's never
6 been a default paid by a Vermont captive or risk retention
7 group. Vermont does its job. It monitors these
8 companies, it looks at them. National Guarantee has to
9 submit audited financial statements every year to the
10 State of Vermont. It has to provide unaudited financial
11 statements quarterly, and it has to report any substantial
12 changes in the company to the Vermont regulators on an
13 ongoing basis.

14 The audited financial statements are
15 prepared by Arthur Anderson. Arthur Anderson has been
16 involved with National Guarantee since its inception ten
17 years ago. He has performed the audited financial
18 statements every year. Arthur Anderson has a vested
19 interest in making sure that these numbers make sense and
20 the projections and financial strength of the company make
21 sense. They're putting their errors and omissions

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22 insurance on the line, not to mention their own

23 reputation.

24 Marsh, Inc. is the service company that

25 manages the day-to-day operations of National Guarantee in

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1 Burlington, Vermont. Marsh is the result of the merger of
2 Johnson & Higgins and Marsh & McClennan. They are the
3 largest provider and broker in insurance services in the
4 world. They've been involved with National Guarantee from
5 the beginning. They prepare all of the financial
6 statements, all of the reports, monitor all of the
7 financial activity of the company. Marsh handles
8 approximately 125 of the 400 Vermont companies. This firm
9 has a vested interest and their errors and omissions
10 insurance is on the line if they allow National Guarantee
11 to be anything other than a viable company. I have a
12 couple handouts that explain some of this to you.

13 And lastly, A.M. Best -- National Guarantee
14 went to A.M. Best for a rating about a year ago because
15 they needed it in California. It had not gone to Best in
16 the past because there was never any need in any
17 jurisdiction to have an additional stamp of approval on
18 the company. They went to A.M. Best. A.M. Best reviewed
19 the company, reviewed Waste Management and gave National
20 Guarantee an A minus rating.

21 Before I open it to questions, I guess my

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22 points are National Guarantee is risk transfer from Waste
23 Management. There are assets in National Guarantee that
24 would enable it to meet what I call its realistic
25 obligations if there were defaults at Waste Management.

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1 Is it related to the parent? Yes, it is. Can it stand on
2 its own? Yes, it can. And that's just not myself at
3 Shares, that's the opinion of Arthur Anderson, Marsh and
4 McClennan, State of Vermont, Department of Banking and
5 Insurance. I think there's quite a bit of credibility.

6 BOARD MEMBER ROBERTI: Mr. Chairman.

7 CHAIRMAN EATON: Senator Roberti.

8 BOARD MEMBER ROBERTI: I don't know if
9 we're continuing, but I would like to make a motion.

10 CHAIRMAN EATON: I have a few questions I
11 would like to try and --

12 BOARD MEMBER ROBERTI: Let me -- Resolution
13 1999-485, I would like to make a comment. That, and I
14 want to make a comment. That it is an enormously
15 (inaudible) for Waste Management to expect this Board in
16 my estimation to risk the taxpayers of the state of
17 California on a major liability where your own underlying
18 stock is being compromised on the stock market for any
19 number of reasons, including possibly the respective as
20 most stock going down of future earnings, possibly going
21 down, on a subsidiary company which is the primary

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22 reliance for liability, which has \$300 million at the max
23 of protection for all the people in the United States of
24 America. And we're supposed to just say well, hey. Let's
25 give you a little patience. Let's go along with you, when

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1 we can end up with a financial disaster not unlike the
2 tire disaster that just hit us today, and then we'll just
3 say well, where are we? We just kind of went along,
4 trying to be nice guys, good guys.

5 Our first, primary and frankly only
6 responsibility is to the people of the state of
7 California, the taxpayers, and I mean -- I just think it
8 strains credulity more than anything else I've heard since
9 I've been on the Board, for you to expect us to allow you
10 to continue to be self-insurers. We would be damned
11 before the public if we did that.

12 CHAIRMAN EATON: Senator, I didn't want to
13 interrupt you because I know you've got time constraints.

14 BOARD MEMBER ROBERTI: I'm sort of
15 pressing, but my wife is in the hospital and I have to get
16 back.

17 CHAIRMAN EATON: I hear you. Maybe,
18 Mr. Stoddard would be there and it would be moot after
19 your motion.

20 Mr. Stoddard.

21 MR. STODDARD: I would like to respond to

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22 that. We did not inventory captive insurance, and we are
23 certainly not asking the people of state of California to
24 take any risk on our behalf. This is a mechanism that's
25 allowed by federal regulation. It's a mechanism that

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1 twice the California legislature overwhelmingly said we
2 think is an appropriate mechanism and we would like to
3 even improve and make it safer.

4 BOARD MEMBER ROBERTI: I understand,
5 Mr. Stoddard, and if I were -- possibly if I were in your
6 position, I would be saying the same thing, but the
7 California legislature voted before the stock went down by
8 50 percent in anticipation, I suspect, of future earnings,
9 which is the main reason why stock goes down. I seriously
10 wonder if the California legislature would vote the same
11 way knowing now what the market's opinion of your
12 financial condition happens to be.

13 MR. STODDARD: With all due respect,
14 Senator, it's not a position on the health of the company.
15 It's about the future earning prospects and the rate of
16 growth and the investment potential associated with our
17 company and with our industry.

18 BOARD MEMBER ROBERTI: Partially correct.
19 Future earnings -- future earnings do relate to the health
20 of the company, not totally, but in large part, in large
21 part. Maybe you anticipated more growth in the future

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22 than you ever dreamed you were going to have. That may

23 not reflect on your financial growth, but earnings have a

24 lot to do in the anticipation of the market, have a lot to

25 do with what the public perceives as your health, and what

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1 you're underlying strength to guarantee the public if
2 there is a disaster will be.

3 MR. STODDARD: The indicator of our
4 underlying strength is our A.M. Best rating.

5 BOARD MEMBER ROBERTI: An indicator. An
6 indicator.

7 MR. STODDARD: I would say it's one of the
8 best indicators. At some point, when you compare a
9 General Electric or Johnson and Johnson to America Online,
10 you're going to see very different rates of growth and
11 you're going to see very different multiples that the
12 stock is going to trade at. And in one case, you can be
13 dealing with a stock multiple of a hundred or even
14 infinitesimal because there are no earnings.

15 So I would object strongly to using the
16 stock performance of any company as an indicator of its
17 financial well being.

18 BOARD MEMBER ROBERTI: It is a major
19 indicator, not a totally reliable indicator, but an
20 indicator of significant importance. And we would be
21 negligent if we didn't take it into consideration and we

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22 only took into consideration the indicators that you want

23 to us take into consideration, something I might do if I

24 were in your position. But it is an indicator and I don't

25 see how you can argue away that it's not.

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1 It's not the only indicator. I understand
2 that. It may be dashed expectations that has nothing to
3 do with your strength. That may be in part true, but it
4 does have something to do with your strength, I humbly and
5 respectfully submit.

6 CHAIRMAN EATON: Senator.

7 BOARD MEMBER ROBERTI: That's all I have to
8 say.

9 CHAIRMAN EATON: Did you say you're going
10 to make a motion?

11 BOARD MEMBER ROBERTI: I made a motion --
12 I'm making a motion we adopt Resolution 1999-485.

13 CHAIRMAN EATON: Second the motion.

14 BOARD MEMBER JONES: Mr. Chairman, may I
15 ask a question of the maker of the motion? The motion
16 or -- the Resolution as read says the transition shall be
17 completed in 60 days. Is that -- is that enough time
18 to -- I mean, 60 days is a pretty short time frame to try
19 to move something.

20 BOARD MEMBER ROBERTI: I tend to be relying
21 on our staff's recommendation so I rely on --

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22 MR. CHANDLER: What we were relying on,
23 Senator and Mr. Jones is the regulations. Unfortunately,
24 I don't have the flexibility to authorize to offer
25 anything more than what's in the regulation right now.

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1 BOARD MEMBER JONES: I just asked because
2 it seemed --

3 MR. STODDARD: It's a very tall order for
4 us. I would say we didn't get this package until
5 yesterday afternoon, and I would strongly say that is
6 completely inadequate notice for a complete U-turn.

7 We have been working in good faith to pass
8 legislation with overwhelming support, and even if you
9 take Waste Management out of the equation, the
10 legislature -- and this bill was chosen by the Chair of
11 the Insurance Committee -- felt that this was an
12 appropriate mechanism. If you deem that Waste Management,
13 because of stock performance or other reasons, shouldn't
14 be allowed to use it, I would assert that really requires
15 more than 60-day notice, and I feel we didn't get adequate
16 notice for the magnitude of this decision.

17 We simply never saw this until yesterday
18 afternoon despite repeated attempts to get information.
19 We would strongly urge you to put this over and so we can
20 continue to work with staff on this issue.

21 CHAIRMAN EATON: Staff want to respond?

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22 Were there discussions?

23 MR. CHANDLER: I think Mr. Stoddard is

24 correct. This item was put together and went to print

25 late. I would also point out, though, that we sat down

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1 with Mr. Stoddard as late as Friday of last week, and I
2 indicated to him at that time that the range in options
3 that would come before the Board would range from
4 recommendation to not move forward with the regulations at
5 this time, to a range that may include trying to determine
6 what the appropriate backstop mechanism is. I think your
7 package reflects that. It is not a surprise to Mr. White
8 or Mr. Stoddard.

9 And he mentioned this in the meeting, that
10 historically my staff, starting with its director, have
11 had difficulty getting comfortable with the use of captive
12 insurance. We recognize that the legislature has approved
13 that mechanism, but in doing so the legislature gave this
14 Board some discretion. Not saying we shall, but we may,
15 and that we should look at all of the possible factors
16 that should go into that regulatory package.

17 We now believe that given the events that
18 have occurred most recently put in place a prudent
19 recommendation that this Board not take forward a
20 regulatory package beginning at this time that begins
21 moving Waste Management towards the more traditional

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22 mechanisms.

23 CHAIRMAN EATON: All right. We've got a

24 motion before us.

25 BOARD MEMBER PENNINGTON: Mr. Chairman, can

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1 I ask this?

2 CHAIRMAN EATON: Surely.

3 BOARD MEMBER PENNINGTON: As far as I
4 understand, the 60-day period is all we're allowed. We
5 couldn't extend that time period somewhat?

6 MR. CHANDLER: I'm certainly sympathetic
7 with the magnitude of this decision, potential decision,
8 but I don't believe -- and I've asked the attorneys do we
9 have the authority, do I have the authority, would the
10 Board have the authority to deviate from what is in the
11 regulations right now? And I think we would be subject to
12 a challenge should someone indicate that, where did you
13 get 120 days or where did you get 180 days.

14 The statute requires that if we require
15 someone to move on such a mechanism and to set up a
16 different mechanism, that they have 60 days to do so.
17 Obviously we can have a discussion around that. But in
18 answer to where did the 60 days come from, (inaudible) it
19 comes from our Code of Regulations.

20 CHAIRMAN EATON: All right. Senator
21 Roberti, that was Resolution 98-252, if I'm not mistaken.

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22 I want to make sure we got the right one.

23 BOARD MEMBER ROBERTI: 1999-485.

24 CHAIRMAN EATON: You're right. I'm wrong.

25 All right. Senator Roberti moves and Mr. Eaton seconds

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1 that we adopt Resolution number 1999-485.

2 Madam Secretary, please call the roll.

3 BOARD SECRETARY: Board Members Jones.

4 BOARD MEMBER JONES: Aye.

5 BOARD SECRETARY: Moulton-Patterson.

6 BOARD MEMBER MOULTON-PATTERSON: Aye.

7 BOARD SECRETARY: Pennington.

8 BOARD MEMBER PENNINGTON: Aye.

9 BOARD SECRETARY: Roberti.

10 BOARD MEMBER ROBERTI: Aye.

11 BOARD SECRETARY: Chairman Eaton.

12 CHAIRMAN EATON: Aye.

13 Next item. Okay.

14 We'll take a ten-minute break.

15 (Brief recess taken.)

16 CHAIRMAN EATON: Welcome back, everyone.

17 We'll move to the next item on today's remaining agenda.

18 That would be Item Number 73, standardized permit for the

19 Engel and Gray Compost Facility.

20 MR. PENICK: The Engel and Gray Regional

21 Composting Facility. Oh, I'm sorry. My name is Brad

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22 Penick representing the Permitting and Inspection Branch.

23 Sorry about that.

24 The Engel and Gray Regional Composting

25 Facility is located approximately three miles west of the

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1 City of Santa Maria in Santa Barbara County. It is
2 located on a 40-acre piece of land owned by the City of
3 Santa Maria, and it is also located adjacent to the City
4 of Santa Maria Waste Water Treatment Plant. It's
5 currently operating as a green material composting
6 facility under a registration permit issued by the LEA on
7 September 8th, 1995. Approval of this permit with a
8 standardized permit would allow -- sorry.

9 CHAIRMAN EATON: This is your first time?

10 MR. PENICK: Yes, it is.

11 CHAIRMAN EATON: That's why I did that.

12 (Laughter)

13 MR. PENICK: I'm a little bit nervous.

14 BOARD MEMBER JONES: You're doing fine.

15 MR. PENICK: The proposed standardized
16 permit would allow the facility to increase its capacity
17 to 100,000 cubic yards actively composting at one time and
18 allow the operator to begin accepting class A sewage
19 sludge from the City of Santa Maria Waste Water Treatment
20 Plant which is located adjacent to this property.

21 At the time the item was prepared, the

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22 proposed permit had not been received so you'll see

23 several blanks on the agenda item. I'll go through those

24 right now starting with state minimum standards.

25 Staff performed an inspection of this

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1 facility on September 2nd and found it to be in compliance
2 with state minimum standards. As far as CEQA goes, staff
3 has reviewed the mitigated negative declaration prepared
4 by the City of Santa Maria acting as the lead agency in
5 1995 and found it adequate for the proposed project.

6 The only major issue for this facility is
7 one of conformance and let me try to do this justice. The
8 Engel and Gray facility is not included in the
9 multi-jurisdictional NDFE for Santa Maria which was
10 prepared and approved in 1996. The facility is, however,
11 located in Santa Barbara County's Summary Plan, which was
12 approved in October 1998. Although the site is listed in
13 the Summary Plan and the Plan was noticed for 30 days
14 rather than the three days required for an NDFE, the
15 description in the Summary Plan does not include the
16 facility capacity, diversion rates or the jurisdictions
17 which would be served by this facility.

18 I have been informed that the City of Santa
19 Maria is currently undertaking the process to update the
20 NDFE, and I have also been informed it may take them
21 several months. Because of this issue, the Office of

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22 Local Assistance was not able to determine conformance for
23 this permit, and if you have any further questions
24 regarding that issue, Nikki Mizwinski is present from OLA
25 and she can answer those.

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1 If you have any further questions regarding
2 the facility, both the operator and the LEA and a
3 representative of the City of Santa Maria are present.

4 And due to the conformance issue, staff has
5 no recommendation at this time.

6 CHAIRMAN EATON: All right. Any questions
7 of staff?

8 BOARD MEMBER JONES: I have one.

9 CHAIRMAN EATON: Mr. Jones.

10 BOARD MEMBER JONES: Mr. Chairman, I have a
11 question for OLA.

12 MS. MIZWINSKI: Good afternoon. I'm Nikki
13 Mizwinski with Office of Local Assistance. Your question?

14 BOARD MEMBER JONES: Okay. Was the
15 facility -- in reading all this documentation ahead of
16 time, was the facility itself identified in the NDFE but
17 not the operator, not the current operation, but the fact
18 that there was going to be a composting facility at this
19 address?

20 MS. MIZWINSKI: In the NDFE?

21 BOARD MEMBER JONES: Yes.

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22 MS. MIZWINSKI: Yes.

23 BOARD MEMBER JONES: Okay. And that was

24 going to be done, as I remember, by the City or somebody,

25 or the County -- the City. The City gave it up and this

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1 operator has filled it -- has gotten into that? Is

2 that --

3 MR. PENICK: I think Mike can answer that

4 question.

5 MR. SCHMAELING: The 1994 --

6 CHAIRMAN EATON: Would you state your name

7 for the record?

8 MR. SCHMAELING: Mike Schmaeling, LEA for

9 Santa Barbara County. Good to see you all.

10 BOARD MEMBER JONES: One of the best.

11 MR. SCHMAELING: In the 1994 NDFE, it

12 described a facility that the City was going to run and it

13 did give diversion jurisdictions and the information that

14 was required. The Summary Plan changed that, still

15 showing the location as being the same to that. So when I

16 processed the permit, I felt that it was in compliance as

17 far as the conformance and forwarded that on to the Waste

18 Board.

19 BOARD MEMBER JONES: Okay. Because I know

20 that's an issue that I think we have to be careful about

21 as far as making sure that we're consistent. But if you

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22 go to the dot on the map and the fact that it was, in
23 fact, identified, I have a little more comfort with that,
24 and the fact that it's a different operator probably needs
25 to be updated.

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1 What are the plans in Santa Barbara County
2 for updating NDFEs? Are you doing it every year, couple
3 of years, as it needs be?

4 MR. SCHMAELING: As you may be aware of,
5 there's quite a bit of controversy going on in other sites
6 within there.

7 CHAIRMAN EATON: In Santa Barbara?

8 BOARD MEMBER JONES: You're kidding.
9 (Laughter)

10 MR. SCHMAELING: I'm in the north county.
11 The --

12 BOARD MEMBER JONES: One of your first.
13 (Laughter)

14 MR. SCHMAELING: The County is hesitant to
15 revise that but they're realizing that they are going to
16 have to. The City is here to describe their process, and
17 tomorrow the local task force is planning to start the
18 process as far as amending this, but that will take
19 several months.

20 BOARD MEMBER JONES: Okay. Question for
21 our staff, and whoever feels the most comfortable. It's

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22 very few of these are ever black and white, it seems like.

23 We haven't seen any lately that have been in black and

24 white.

25 It was identified originally in the NDFE

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1 that they were going to be composting, got a new operator,
2 the new operator and all that is in the Summary Plan,
3 which we accepted. The public noticing with the Summary
4 Plan as you said and the thing was 30 days, were there any
5 objections to the project?

6 MR. SCHMAELING: No.

7 BOARD MEMBER JONES: Do we risk opening up
8 flood gates? Is there a down side -- knowing that it was
9 identified in the NDFE under a different name, it is in
10 the Summary Plan, is there something that we need to know
11 that could be a consequence, an adverse consequence of
12 this that we need to put in as part of our deliberations?

13 MS. CARDOZA: Catherine Cardoza with the
14 Office of Local Assistance, Central Section.

15 Staff, correct me if I'm wrong, but I
16 believe it was identified in the NDFE as potentially a
17 private or a city-run facility in Santa Maria. It did not
18 have -- did it have an address? I don't believe it had an
19 address.

20 MR. SCHMAELING: It said adjacent to the --

21 MS. CARDOZA: The water treatment plant.

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22 That was how it was identified. And then in the Summary

23 Plan, it was identified with the operator and then it was

24 private, not a city-run.

25 The flood gate, the problem is how far away

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1 from the dot on the map are we going, with which document
2 is it in, and also it is not described as far as capacity
3 or participating jurisdictions, or the diversion rate in
4 that Summary Plan. So there was really no description of
5 what that facility would be as far as what the County
6 people reviewing the Summary Plan would have had to see
7 about what the facility might be as far as size.

8 I know we're talking about if it gets to
9 dot on the map in size and increase in size doesn't
10 matter.

11 BOARD MEMBER JONES: Okay.

12 MS. CARDOZA: And we haven't addressed that
13 issue yet with any kind of policy.

14 BOARD MEMBER JONES: We keep addressing it
15 every time we get one of these permits.

16 MS. CARDOZA: Right.

17 CHAIRMAN EATON: All right. I have two
18 speaker slips. Mr. Bob Engel.

19 MR. ENGEL: I wanted to say good evening,
20 but good afternoon, Chairman and Board Members.

21 CHAIRMAN EATON: You've been here as long

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22 as we have, it's probably good evening. Since yesterday.

23 MR. ENGEL: I'm Bob Engel and I'm with

24 Engel and Gray. I'm a second generation owner of Engel

25 and Gray. We are celebrating our 53rd anniversary in

1 business in the Santa Maria Valley.

2 And I think you've seen some information on
3 this. I just want to address a couple of quick points. I
4 did send via E-mail, and I hope it got to the Board
5 Members, a letter of chronology of events, but I do feel
6 we met the intent of notification of the NDFE.

7 In the time line I had sent everyone via
8 E-mail, the NDFE was put to bed at the County level in
9 November of 1994. We started permitting in 1995 for the
10 facility. We took it from that point. We had four public
11 hearings, one for the lease of the city land, one for the
12 negative dec, one at the County planning level, and one at
13 the Regional Water Quality level that was just last April
14 9th.

15 Until we got done with that complete
16 process and at the Regional Quality Water level, we
17 weren't sure if we were going to have any other
18 restrictions on tonnages that would be brought in, and
19 that was why tonnages were never put in the Summary Plan
20 because there was never an exact tonnage to be put in. I
21 do believe there was kind of -- our diversion rates for

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22 the plan are listed in the Summary Plan. It was an error.

23 I can't really call it an error by staff because they've

24 done a great job. It's listed as the Santa Maria

25 Co-Composting Facility, rather than in the map it's listed

1 as Engel and Gray Composting Facility on the maps, and
2 that's what the name of our facility is. So the diversion
3 rates are put -- it's on Table 57B in the Summary Plan.
4 Somebody putting together the Summary Plan didn't
5 adequately describe that it had changed to Engel and Gray.

6 I guess my point is that we've gone along
7 this process since 1985 trying to get a composting. I
8 participated in the composting regulations in the Board
9 hearing rooms back in 1995. We went right out, as soon as
10 the regulations were passed, and got a registration permit
11 just so that we could be above-board and nobody would say
12 anything and we also began to get monthly inspections.

13 We run a top-notch facility, I believe, and
14 I think the inspection record would show that. Also, our
15 landlord from the City of Santa Maria Solid Waste Division
16 is here. I also have an overhead picture that shows our
17 location if you want to see it.

18 Other than that, I'm available to answer
19 any questions. I would ask that you okay the facility so
20 that we can go ahead and continue on.

21 CHAIRMAN EATON: Thank you, Mr. Engel. Any

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22 questions of Mr. Engel?

23 Mr. Chisam, or do you wish to speak or just

24 respond to questions?

25 MR. CHISAM: For the record, since I came

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1 up here, I should at least put my name on the record.

2 Dwayne Chisam, Utilities Manager, City of Santa Maria.

3 I'm here to answer any questions you may have.

4 CHAIRMAN EATON: Thank you.

5 BOARD MEMBER PENNINGTON: Mr. Chairman.

6 CHAIRMAN EATON: Mr. Pennington.

7 BOARD MEMBER PENNINGTON: I'll move

8 adoption of Resolution 1999-481 with the appropriate

9 findings to indicate that the Board has found the proposed

10 permit to be consistent with CEQA, in conformance with the

11 intent of the County Integrated Waste Management Plan,

12 meets all local and state permit requirements, and is

13 consistent with the state minimum standards and therefore

14 concurs in the proposed permit.

15 CHAIRMAN EATON: Okay.

16 BOARD MEMBER JONES: I'll second.

17 CHAIRMAN EATON: Mr. Pennington moves and

18 Mr. Jones seconds that we adopt Resolution 1999-481 with

19 all the appropriate findings.

20 Madam Secretary would you please call the

21 roll.

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22 BOARD SECRETARY: Board Members Jones.

23 BOARD MEMBER JONES: Aye.

24 BOARD SECRETARY: Moulton-Patterson.

25 BOARD MEMBER MOULTON-PATTERSON: Aye.

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1 BOARD SECRETARY: Pennington.

2 BOARD MEMBER PENNINGTON: Aye.

3 BOARD SECRETARY: Roberti.

4 Chairman Eaton.

5 CHAIRMAN EATON: Aye.

6 Next item, Item 75, construction and

7 demolition debris regs. I remind any of you who want to

8 speak on that subject -- I'm only laughing because I

9 promised Ms. Denise Delmatier a few minutes, and I promise

10 after this and before newsprint. How is that? But I also

11 remind those who would like to speak on the C&D regs, I

12 have them right here.

13 Thank you very much.

14 MS. NAUMAN: Mr. Chairman and Members,

15 Julie Nauman, Deputy Director, Permitting and Enforcement

16 Division.

17 I have before you this afternoon a

18 construction and demolition regulation package. The

19 official title of the item is consideration of the

20 adoption of the negative declaration for the proposed

21 construction and demolition/inert debris regulations; and

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22 consideration of the adoption of proposed construction and

23 demolition/inert debris regulations.

24 As you will recall, we had just completed

25 the 15-day review period. Since the last time we saw that

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1 package, that review period closed on September 18th,
2 which was Saturday. Staff has been working diligently
3 since that time to review all of the comments that have
4 been received, and we're prepared this afternoon to review
5 those comments with you.

6 We would like to suggest a procedure here
7 this afternoon. We will go through the highlights of the
8 comments, the areas that they fall into. I will cover
9 that, and then will ask Marsha Kiese, has been the lead
10 on it, to review with you in detail the nature of those
11 comments. I presume there will be some public testimony,
12 and following that we would like to have an opportunity to
13 respond to those additional comments, then engage in some
14 discussion with you as you try to reach closure on this.

15 I might also add that the package is on a
16 very tight time line. October 16th is our deadline for
17 getting this package to the Office of Administrative Law.
18 I think there's been some question and perhaps confusion
19 over the last couple of days about timing on this.

20 If the Board does make some changes to the
21 package, I'll certainly defer to Legal on this if there

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22 are additional questions. But should you make a number of
23 changes to the package, it will be necessary to send the
24 package out for another 15-day review. In order for us to
25 make our October 16th deadline, that will require the

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1 Board take one last look at the package to actually adopt
2 it prior to the 16th. Sorry for the bad news.

3 CHAIRMAN EATON: Is that code for we're
4 going to have to have another hearing?

5 MS. NAUMAN: It could be.

6 CHAIRMAN EATON: I'm serious.

7 MS. NAUMAN: Yes. It would mean that you
8 would have to convene to finally adopt the package after
9 the final 15-day comment period, and if you were to act
10 today and the comment period began tomorrow, I believe it
11 would require a meeting approximately the 5th or 6th of
12 October which is a Tuesday-Wednesday.

13 CHAIRMAN EATON: Okay.

14 MS. NAUMAN: So also, by the way of
15 introduction, you have a number of documents that staff
16 has prepared over the last 48 hours or so. They include a
17 document dated September 22nd, Item 75, and it also says
18 in the corner "revised" in blue ink. There are copies of
19 all these documents on the back table, and the title is,
20 "Existing Facilities Interim Permit Options and Transition
21 Issue," and Deborah Borzelleri from Legal will be

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22 reviewing that with you when we get to that item. There's
23 also a letter from the City of Monrovia, which I assume
24 was a late addition to the comments. It's dated September
25 21st. We also have a summary of the regulations. The

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1 title is C&D inert debris regulations summary of comments
2 from the 15-day comment period. This is what we'll be
3 moving you through this afternoon. And finally, when we
4 get into a discussion of potential impacts on diversion,
5 you have a chart that we will utilize in that discussion.

6 So moving on now, you'll see up on the
7 screens that the comments that we've received fall into
8 basically three areas.

9 The first is tier placement. This is a
10 policy issue that we will review with you and comments
11 we've received, but we're looking for Board's direction
12 with respect to the appropriate tier placement for the
13 various types of waste that are defined in the package.

14 The second, results from that, and related
15 to it, and that is the potential for impact on diversion.

16 Finally, the third area we call technical
17 issues. As we work through each of these, because they
18 are technical in nature, we will be providing you some
19 suggestions for how to resolve those issues.

20 So with that as background, I'll ask Marcia
21 to begin the more detailed discussion.

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22 MS. KIESSE: I'm Marcia Kiese,
23 K-i-e-s-s-e. Good afternoon, Mr. Eaton and Board Members.
24 Staff received approximately 55 comment letters during the
25 15-day comment period that began on September 3rd, roughly

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1 double the number of letters that we had received during
2 the initial 45-day public comment period.

3 Comments were received from quite a few
4 local jurisdictions and public agencies -- the LEAs;
5 industry, including owners of quarries; construction
6 companies; equipment companies; and rock product
7 suppliers. In addition, we received comments from CRRC,
8 CAW, League of Cities, CSAC, SWANA, and CMAC.

9 Staff read every letter we received up
10 until last night and made note of the comments we
11 received. Most of the comments fell into roughly three
12 general categories, which I will go over now.

13 The first one -- the first category relates
14 to tier placement. The comments concluded this regulation
15 package is not needed, there are no identified health and
16 safety and environmental impacts from this wastestream,
17 there is overlap with other agencies, in particular with
18 mine reclamation sites which are regulated under the SMARA
19 or Surface Mining And Restoration Act lead agency, CEQA
20 review -- California Environmental Quality Act --
21 conditional use permits, financial assurances, annual

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22 inspections. State Mining and Geology Board regulations

23 which were in effect for mine reclamation plans approved

24 after January 15th, 1993 also include performance

25 standards for wildlife habitat, backfilling, regrading,

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1 slope stability and recontouring, revegetation, drainage,
2 diversion structures, water ways and erosion control,
3 agricultural land, stream protection including surface and
4 ground water, top soil salvage maintenance and
5 redistribution, tailing and mine waste management, and
6 closure of surface openings.

7 If there are water quality concerns, the
8 mine reclamation plants typically condition all waste
9 discharge requirements. Staff notes that in SMARA it is
10 basically silent on the subject of imported waste, and
11 there is nothing that directly regulates the content of
12 backfill.

13 Additional comments regarding tier
14 placement include that we should have used the tiers in
15 the existing transfer processing station regulations or
16 landfill regulations by adding the C&D wastestream, 15-day
17 comment period is too short, there have been many changes
18 since the last draft, start over with more input and
19 feedback, impacts to AB 939 attainment, proposed tier
20 placement -- that is placing C&D and inert materials into
21 registration of full tier alters the treatment of these

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22 materials for diversion purposes, and in fact, they should
23 be considered beneficially used. Reduction in incentives
24 to recycle, there will be longer hauling distances because
25 current facilities will find it necessary to close because

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1 they have economic impacts, the operator may need new
2 equipment, additional staff will have increased operating
3 expenses, and there could also be regional economic
4 impacts. Were these materials to be taken to sites
5 farther away and buried, it would create competition
6 issues for both operator and local jurisdictions.

7 Another comment in this category was to
8 move Type A Inerts to the notification tier because less
9 oversight is needed. An earlier draft included
10 engineering or engineered inert fills, and they were taken
11 out in this last draft that we circulated. And we
12 received comments that we should bring them back if they
13 use Type A inerts because they need less oversight, and
14 the suggestion was to move them into the notification tier
15 or excluded tier.

16 And finally, rating activities need to be
17 addressed including perhaps limited duration projects
18 which need less oversight moved to notification tier or
19 excluded tier.

20 The second category has to do with
21 diversion impacts. I'll just read off these three and

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22 then Elliott Block will provide more detail. The first
23 one was impacts to AB 939 attainment. Jurisdictions may
24 receive windfalls or conversely they may receive adverse
25 impacts to their diversion goals. As proposed,

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1 registration tier for Type A inerts may reduce incentives
2 to recycle. And lastly, they recommend that we delay the
3 portion of regulations that impact diversion.

4 MR. BLOCK: Elliott Block from the Legal
5 Office. Excuse me for just a moment. Actually, I thought
6 I was going to be talking a little bit later in the
7 presentation. Very quickly, I've got printouts of a
8 couple of overheads I'm going to use here.

9 MS. NAUMAN: Mr. Chairman, we're changing
10 the program here. I'm going to ask Marcia to finish
11 reviewing all of the comments with you and then we'll
12 start working through these because it may be as you
13 consider some of the policy questions related to tier
14 placement, that can better focus the discussion of
15 diversion potential impacts and shorten the discussion.

16 MS. KIESSE: For technical issues, the
17 first one we talked about is the interim permit. That was
18 a relatively new -- well, very new section that we put
19 just in the last draft that was noticed, and it's covered
20 in one of your handouts. I'll go through the issues on
21 that because I think it warrants more detail.

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22 This section was added to address existing
23 facilities and to provide interim permit options and to
24 address the transition issue. The comments that we
25 received included the following: Existing facilities may

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1 not have been addressed in the non-disposal element, NDFE,
2 and to modify the NDFE may take up to six months; interim
3 permits would duplicate the normal permit process and
4 would create a significant workload for LEAs for limited
5 benefit; LEAs believe the interim permit may conflict with
6 existing statutory provisions, specifically Public
7 Resources Code Sections 44002, 44004, 44007 through 44010,
8 44012, 44014, and with current permitting processes; the
9 proposed language for interim permits creates a
10 nondiscretionary process with no LEA evaluation or review
11 of the operation to meet state minimum standards, CEQA, or
12 CIWM requirements and does not promote compliance before
13 being permitted; it could be abused; once issued, the
14 interim permit would be difficult to revoke; it is unclear
15 what is intended by complete permit package; if the
16 process were made discretionary, it would require time
17 frames and processes similar to existing permits, would
18 create tremendous additional workload for the LEAs, and
19 would not logistically solve the primary concerns; no
20 provision is made for the LEA to recoup fees for these
21 permitting activities; the allowances of 90 days and 100

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22 days are insufficient to allow the operator to obtain and
23 the LEA to issue a regular permit; and the last comment
24 was to remove the interim permit provision.

25 Regarding transition issue for facilities

1 with existing full permits, we received a comment that
2 there is a need to address the transition issue for
3 operators with a full Solid Waste Facility Permit that may
4 wish to surrender their permit for replacement with a
5 registration permit or notification tier.

6 The following are staff's proposed options.
7 Number one, remove interim permit language from the
8 regulatory package which would require the EA to
9 immediately issue a cease and desist order to any
10 unpermitted operating facility to immediately shut down
11 operations until the appropriate permit could be obtained.

12 Number two, leave the interim permit
13 language in the regulatory package with no changes.

14 Number three, modify the interim permit
15 language as shown on the attachment, and I will read that
16 shortly. This proposal would enable the EA to issue
17 either a cease and desist order or an interim permit based
18 on the EA's evaluation of the facility as to whether it
19 would be detrimental to the public health, safety and the
20 environment to allow the facility to continue to operate.

21 And option number four is to add language

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22 to the regulations that makes provisions for surrendering

23 an existing Solid Waste Facility Permit and obtaining a

24 lesser permit or tier placement.

25 I'll just go over the proposed language for

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1 the interim permit. The title of the section would be
2 changed so that it says existing facility and interim
3 permits. Subsection A, for existing unpermitted and
4 non-exempt facilities that require either a registration
5 permit or a full Solid Waste Facility Permit pursuant to
6 this article, the EA may issue an interim permit as
7 described in the following subsections. Alternatively,
8 the EA may evaluate the facility, and if it is determined
9 that allowing the facility to continue to operate would be
10 detrimental to public health and safety and the
11 environment, the EA should immediately issue a cease and
12 desist order pursuant to Public Resources Code Section
13 45005, ordering the facility to immediately cease
14 operations and directing the owner or operator of the
15 facility to obtain the appropriate Solid Waste Facility
16 Permit in order to resume operation of the facility.

17 Subsection B, the EA may recover fees for
18 interim permit activities pursuant to Public Resources
19 Code Sections 43212 and 43213.

20 Subsection C, any operator of an existing
21 construction and demolition or inert facility that is

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22 required to obtain a registration permit pursuant to this
23 article, may obtain an interim registration permit subject
24 to the limitations of Subsection A to be in effect no
25 longer than 120 days after -- and here the Office of

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1 Administrative Law would fill in the effective date of the
2 regulations -- by complying with the application
3 requirements of Subsection E below.

4 Subsection D, any operator of an existing
5 construction and demolition or inert facility that is
6 required to obtain a full Solid Waste Facility Permit
7 pursuant to this article may obtain an interim full Solid
8 Waste Facility Permit subject to the limitation in
9 Subsection A to be in effect no longer than 210 days
10 after -- and again here they would fill in the effective
11 date of the regulations -- by complying with the
12 application requirements of Subsection D below. Or that
13 should be E.

14 Subsection E, the application for interim
15 registration permit or interim full Solid Waste Facility
16 Permit shall be submitted to the EA and subject to the
17 EA's evaluation of the facility as set forth in Subsection
18 A. The interim permit may be issued immediately upon a
19 finding that the application is complete.

20 The application shall contain the following
21 information: One, name and address of the facility; two,

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22 name and address of owner and operator; three, types and

23 quantity of construction and demolition and/or inert

24 debris accepted at the facility on a daily basis; four,

25 facility type such as C&D disposal facility; five, map

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1 indicating the facility operations and boundary; six,
2 certification under penalty of perjury that A, the
3 information contained in the application is true and
4 correct, B, the facility was in operation on or before the
5 effective date of the regulations, and C, the operator has
6 reviewed the requirements of this article Title 14,
7 California Code of Regulations Sections 18100 through
8 18105.11, Title 27, California Code of Regulations
9 Sections 21563 through 21686; Title 27, CCR Sections 21770
10 through 21900; Title 27, CCR Sections 22200 through 22212;
11 and Title 27, California Code of Regulations, Section
12 22254 -- as applicable for the type of facility for which
13 the permit is being sought and hereby represents that the
14 facility will be in compliance with these requirements,
15 including but not limited to closure and post-closure
16 plans, financial assurances for closure and post-closure
17 and conformance findings no later than 120 days after the
18 effective date of regulations for an interim registration
19 permit and no later than 210 days after the effective date
20 of these regulations for an interim full Solid Waste
21 Facility Permit. I think this actually should be

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22 Subsection F.

23 If an owner or operator has an existing

24 Solid Waste Facility Permit for operation of a facility

25 that qualifies for the notification tier or registration

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1 tier pursuant to this article, the owner or operator may
2 file the information required under Title 14, California
3 Code of Regulations Section 18103.1 for notification tier,
4 or file the appropriate application under Title 14 CCR
5 18104 et seq, for the registration tier, along with a
6 letter of intent to surrender the full Solid Waste
7 Facility Permit.

8 Upon written confirmation by the EA that
9 the operation qualifies for the notification tier, the
10 full Solid Waste Facility Permit shall be deemed
11 surrendered and the owner or operator may continue to
12 operate in accordance with the EA notification tier
13 requirements.

14 Upon issuance of the registration permit by
15 the EA, the full Solid Waste Facility Permit shall be
16 deemed surrendered and the owner or operator may continue
17 to operate in accordance with the registration permit
18 requirements.

19 That was just the first one of the
20 technical issues.

21 BOARD MEMBER JONES: That was the first

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22 one?

23 MS. KIESSE: That was the first one.

24 BOARD MEMBER JONES: How many are there?

25 MS. KIESSE: I'll speak faster.

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1 CHAIRMAN EATON: Perhaps we can summarize
2 would be best.

3 MS. KIESSE: I'll just go quickly through
4 them. The second one is to remove biomass wood ash out of
5 Type A and to review the wastes that are included in Type
6 A and Type B. The language should specifically exclude
7 any designated or hazardous waste.

8 Consistent method for measurement, and this
9 is for contamination versus residual. There was comment
10 that measuring one by volume, you should do the other one
11 by volume also, but we felt to measure contamination by
12 volume was adequate and that way would not require a
13 facility to purchase scales unless they were actually an
14 operating and processing facility.

15 The tier -- the threshold for C&D should be
16 changed from 100 tons per day to 15 tons per day, or 60
17 cubic yards, because C&D debris is more like municipal
18 solid waste than Inert Type A, and this would be
19 consistent with the transfer processing regulations.

20 The Board and LEA roles in financial
21 assurances -- to clarify, to keep traditional roles of

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22 Board review of mechanisms but with financial assurances
23 for cleanup if the LEA determines if it is needed, works
24 with the Board on the amount required and the approval of
25 the mechanism.

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1 Another comment was that for clean closure
2 extensions, these should be granted by the LEA rather than
3 the Board. For requirements for facility design, the
4 language should be less ambiguous to remove any gray
5 areas, and it should state clearly that it's either a
6 civil engineer and registered in the state of California
7 or a certified engineering geologist in the state of
8 California.

9 And lastly, there's a comment we received
10 regarding record keeping, specifically for notification
11 tier, that we should tailor the language for inert debris
12 operations and to utilize the records that the Regional
13 Board requires them to provide in lieu of some of the
14 record keeping requirements currently contained in this
15 draft.

16 That concludes my presentation.

17 CHAIRMAN EATON: Any questions of
18 Ms. Kiese?

19 BOARD MEMBER JONES: Mr. Chairman, not for
20 Ms. Kiese, but I have a question on a couple other issues
21 that I need some answers on.

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22 Yesterday we went through 62 cities,
23 compliance. In two of those, a -- two that we ended up
24 putting on a compliance order, it was -- they had listed
25 diversion as going to New Way and to the Reliance pit as

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1 mine reclamation where they wanted to count that as
2 diversion. We've had this discussion before, and part of
3 what I'm saying here is -- and I know when 515 was going
4 through, we had talked about the impacts on diversion, and
5 those people all said we do not want it to count towards
6 diversion, we do not want it to count as disposal. That
7 was a nullifying -- that makes it fair or reasonable.
8 Yvonne is shaking her head no.

9 MS. HUNTER: That isn't what the League was
10 saying relative to 515. I can -- I'm going to touch on
11 this.

12 CHAIRMAN EATON: If could you come up to
13 the mike for the record, please, Ms. Hunter.

14 MS. HUNTER: Yvonne Hunter with the League
15 of California Cities. Thank you for the opportunity to
16 comment.

17 What we were saying relative to SB 515 was
18 the issue of whether or not the tipping fee should be
19 levied or not, was separate from whether or not it's
20 counted as diversion. We didn't want the fact that you
21 weren't going to charge the tipping fee to say well,

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22 therefore, it's disposal or it's diversion, that that

23 whole debate should be held in another arena.

24 BOARD MEMBER JONES: Another day.

25 MS. HUNTER: Exactly.

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1 BOARD MEMBER JONES: That's what my
2 question was. What I thought 515 said was that it wasn't
3 disposal and it wasn't diversion, because that was our
4 issue.

5 MS. HUNTER: For the purposes of that bill.

6 BOARD MEMBER JONES: For the purposes of
7 them? Okay. There was a fee assessed on these three
8 facilities.

9 MS. HUNTER: Right.

10 BOARD MEMBER JONES: That the operator said
11 it was not diversion, and then there was a letter that
12 went out from one of those companies, telling all the
13 cities that in fact it was diversion, which elevated this
14 to an issue of it's not just the fee, it's the cheap
15 diversion, to fill a hole as opposed to programs. So 515
16 said cut us a two-year hole or one-year hole and we'll
17 deal with that.

18 MS. HUNTER: Right.

19 BOARD MEMBER JONES: And that's reasonable.

20 MS. HUNTER: Exactly.

21 BOARD MEMBER JONES: In my mind we could

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22 slap these in a notification tier and not count them, but

23 give the LEAs the ability to go in and inspect and make

24 sure in fact that material is Inert A, and that would

25 appease the mining people and everybody else, but I'm not

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1 sure we can make that commitment as a Board because we
2 said that would be a two-year window. Okay.

3 MS. HUNTER: If I may, you've touched on
4 what I think is the nub of the issue that the League has.
5 We send a joint letter with CSAC and SWANA. Do you want
6 me to get into comments now or should I come back?

7 CHAIRMAN EATON: I think it's important
8 only because there was this sort of confusion --

9 MS. HUNTER: Right.

10 CHAIRMAN EATON: -- and we understand most
11 of the package. The key issue I think here is
12 basically -- I think your comments were correct. You
13 didn't want it to increase and didn't want it to decrease.

14 MS. HUNTER: Our main concern is --

15 CHAIRMAN EATON: I don't want to misstate
16 that.

17 MS. HUNTER: And I think you're correct. I
18 don't want to get into what's beneficial use, what's not.
19 I don't know where frankly the League is on that, because
20 I think different cities may be in different places.

21 (Laughter)

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22 BOARD MEMBER JONES: We would tend to agree

23 with you.

24 MS. HUNTER: We are absolutely adamant

25 on -- and I know that I've consulted with my colleagues

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1 from CSAC and SWANA what we are adamant on, and I don't
2 think the Board intends to do it, is that those in the
3 rush to take care of potential windfall diversion -- and I
4 don't want what the opposite of windfall is other than
5 very adverse impacts.

6 BOARD MEMBER JONES: That's fair.

7 MS. HUNTER: That those jurisdictions that
8 never, ever counted inerts as part of their base year --
9 because it wasn't going to a permitted facility. So it
10 wasn't in the generation numbers, it wasn't in the
11 diversion numbers, et cetera, that inadvertently suddenly
12 you have your generation numbers going sky high because
13 it's a permitted facility. And that is a very, very, very
14 serious concern.

15 Sort of related to that -- I said I wasn't
16 going to touch on beneficial use, but I would be remiss if
17 I didn't at least comment that there clearly are some
18 areas where it is beneficial. If nothing else, the
19 legislature anticipated that a number of years ago when we
20 went through this horrendous and agonizing debate on what
21 counts, but the resolution was very fair. You get to

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22 count for diversion for white goods, agricultural waste,

23 scrap metal and inert solids if you can demonstrate it's

24 the result of a local action.

25 So if you are tearing down a building or

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1 you are putting in a new street and you have a local
2 ordinance that says any of those activities, any of our
3 contractors must recycle, reuse the material used for road
4 base, it's used in rehab or something like that, you're
5 eligible for credit and we want to make sure that
6 maintains as well.

7 So those are our concerns, and I don't know
8 how the regs can be fixed to do that. I am not an expert
9 on all the tiers. I must admit I'm a bit fuzzy on all of
10 that, but I do know that the unintended consequences would
11 be devastating.

12 CHAIRMAN EATON: And I agree. I think what
13 we want to do is just keep the rules the same as they are
14 right now until such time as that no one is adversely
15 impacted or being, as you say, a windfall. I think part
16 of it with this particular section right here, we haven't
17 had that opportunity, and that's all I'm trying to say.

18 I don't think there's a real problem with
19 trying to move individuals that are within these
20 categories into a thing that eases the burden. On the
21 other hand, we don't want to go into an administrative

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22 nightmare where all of these situations now come in like

23 it was floating around with certain counties and start

24 coming back in. We've just gone through 60 base year

25 adjustments, as you well know. You sat through all of

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1 them and need to be congratulated as well because you were
2 there with us all the way. And I mean that seriously.
3 That's kind of where -- we don't know if this is the case.

4 MS. HUNTER: I just want to avoid, as I
5 know all of you do, my phone ringing off the hook. My
6 God, our diversion numbers have just plummeted.

7 CHAIRMAN EATON: Absolutely.

8 MS. HUNTER: Our disposal numbers have gone
9 up. And I did have a very productive conversation with
10 Mr. Chandler last week where he assured me that clearly
11 wasn't the intent. So we tweaked our letter a little bit.
12 It was getting ready to go out, but I would encourage to
13 do whatever is necessary to make sure that would follow
14 through.

15 BOARD MEMBER JONES: Mr. Chairman.

16 CHAIRMAN EATON: Mr. Jones.

17 BOARD MEMBER JONES: One thing on the
18 beneficial use, when we were discussing the issue of these
19 three permitted facilities, in fact, through the disposal
20 system, they had all taken the appropriate level of
21 diversion credit for beneficial use. New Way took 12

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22 percent, I think it was. Another facility took about 60

23 or 70 and one took zero. And I don't know what that's all

24 about, but they used it in the infrastructure of their

25 facility so that material can go down there, and that is

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1 absolutely in the spirit --

2 MS. HUNTER: Exactly.

3 BOARD MEMBER JONES: -- of the way we
4 operate landfills, the way we take that stuff as
5 beneficial use.

6 MS. HUNTER: And it's the result of a local
7 action.

8 BOARD MEMBER JONES: And it's the result
9 of a local action. Absolutely. So that's different than
10 filling the hole, and that hole is a debate for another
11 day.

12 MS. HUNTER: Absolutely.

13 BOARD MEMBER JONES: Because I bet there
14 are not that many people in this audience that have a
15 problem with the C&D regulations. Maybe they do, but I
16 think the majority of the discussions here are about this
17 inert fraction and what's appropriate. And maybe we need
18 to carve that piece out and deal with it at another time.
19 I don't know.

20 MS. HUNTER: I'm in complete agreement with
21 both Mr. Eaton and Mr. Jones in what you've said, and I'm

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22 going to be in a meeting in southern California tomorrow.

23 Maybe you are, too. Okay.

24 CHAIRMAN EATON: I'm trying to get there,

25 but you know what happens --

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1 BOARD MEMBER JONES: He's doing fires, I'm
2 doing --

3 MS. HUNTER: And I think they will be --

4 BOARD MEMBER JONES: He won.

5 (Laughter)

6 MS. HUNTER: I guess that means --

7 CHAIRMAN EATON: I believe I lost by not
8 being able to go.

9 MS. HUNTER: I'll be at the airport at a
10 quarter to 6:00 in the morning. But anyway, I think they
11 will be pleased to hear the discussion here. I will
12 certainly relay that to them.

13 We'll be very happy to work with you in any
14 way on how you intend to carve that piece out to fix
15 it.

16 CHAIRMAN EATON: I think it's kind of more
17 of a public debate and needs a lot of work issues. On
18 every occasion you've ever been here before, it's a
19 process by how they can survive and that no one should be
20 injured. Period.

21 MS. HUNTER: Right. That's right. Thank

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22 you very much.

23 MR. BLOCK: Elliott Block with the Legal

24 Office. Just to clarify, I think it ties in with the

25 comments you made, but in terms of SB 515, the language

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1 that's in there, just for the Board's benefit, the
2 language in SB 515 specifically provides the two-year time
3 extension or period, whatever you want to call it, is
4 actually only specific to the fee issue itself. And the
5 language in SB 515 says it doesn't affect one way or the
6 other the diversion or disposal. What the Board does or
7 doesn't do with these regulations could eventually do
8 that, but I wanted to make the point that the language in
9 the bill itself doesn't provide a two-year -- the two-year
10 window language is specific to the fee itself, not what
11 counts.

12 CHAIRMAN EATON: But you can't separate
13 regulation that you're going to do in another area that
14 has the same kind of material. It should all be looked at
15 at the same particular point.

16 MR. BLOCK: My point was not to suggest one
17 way or the other, just to make clear the language in the
18 bill was more specific to the fee issue, not the other
19 one. So the Board's actions today, of course, one way or
20 the other would be necessary to carry out the rest of
21 that.

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22 MS. HUNTER: If I may, in -- I think in
23 part the language in 515 that says it doesn't affect
24 diversion or disposal one way or the other, was partially
25 the result of our conversations with Waste Management when

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1 they were proposing the bill. And we said -- and there
2 were several ideas floating around, take inerts out
3 totally, declare them this, that, and we said no, we don't
4 want to touch that. If you're going to do the bill, if
5 you want us to be okay with it, just carve it out for the
6 fee only, and the issue of inerts counting or not counting
7 should be part of a larger discussion that I think we're
8 all going to have fall on a whole variety of issues.

9 CHAIRMAN EATON: But the regulations now
10 have that in there.

11 MS. HUNTER: Yes. And that's our concern
12 on the regulations.

13 CHAIRMAN EATON: Right.

14 MS. HUNTER: Yes.

15 CHAIRMAN EATON: So if we can carve those
16 out --

17 MS. HUNTER: Exactly.

18 CHAIRMAN EATON: -- and let the rest of the
19 package go forward --

20 MS. HUNTER: Right.

21 CHAIRMAN EATON: -- then that's preserved

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22 and there's nothing really, and that's all I'm --

23 MS. HUNTER: And then we're happy and we'll

24 engage with you in that future discussion. Thank you.

25 CHAIRMAN EATON: Ms. Nauman.

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1 MS. NAUMAN: Mr. Chairman, we had intended
2 to ask Elliott to address the diversion issue because
3 staff has been struggling over the course of the last 15
4 days with this issue and trying to figure out if there
5 were a way to keep it all status quo. So we prepared some
6 materials that, if you will indulge us, we can work
7 through to show you what the impact may be at the various
8 tier levels, or obviously if the materials are to be
9 excluded from the package. So I think we're in sync with
10 you, and if you'll allow us to walk through that with you.

11 CHAIRMAN EATON: But I just want to make
12 sure we get the smaller participation. We talked about
13 it, but I'm not sure if there's an adequate notice for all
14 of those who may have a concern about what we're about to
15 do and not do with regulations.

16 We just had the conversation that this
17 should be part of a larger discussion. That's all I'm
18 trying to get to. So basically, just sort of agree with
19 Ms. Hunter that we didn't want to have a larger discussion
20 and now we're going to go back in and have that
21 discussion, or am I mistaken? I could be.

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22 MR. BLOCK: I am here to answer some

23 questions if you have it on those. If you're not inclined

24 to want to talk about that --

25 CHAIRMAN EATON: Any other questions of

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1 staff? I have numerous speakers here. We can maybe get
2 some clarification. Ms. Hunter, you did not use up your
3 slip. I will keep it just in case.

4 Charlie Ray.

5 BOARD MEMBER JONES: Mr. Chairman, could I
6 ask staff a question?

7 CHAIRMAN EATON: Sure. Mr. Jones while
8 Mr. Ray is coming up.

9 BOARD MEMBER JONES: Just so that maybe we
10 can -- if Inert A -- and I'm only floating this. I need
11 to know something. If in a reg package -- and I don't
12 know if this is possible -- but if in a reg package the
13 Inert A that's in question were put into a notification
14 tier that had no fees, it's spelled out that it was not
15 going to count as disposal or diversion except as -- I
16 don't know what the right terminology, how we would fill
17 that, but let me go through with this -- and we called
18 it -- we said it's in this notification tier and then
19 refer back to SB 515 and say over the next two-year
20 period, from whatever the ending date is, 2002, that
21 between the signing of these regulations and that date,

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22 that we will work on the bigger discussion about those,
23 but slot that whole group into a notification tier now,
24 but that we could go back in and open that. Is that a way
25 to keep them -- put them in a notification tier, allow

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1 LEAs and Board staff to go in and make sure that the
2 material going into these facilities is in fact Inert A,
3 and then have the discussion between now and then over
4 what's the appropriate level so that there is some
5 oversight, but it gives people some relief. Or is it
6 redundant? Maybe it's not even needed, but to try to move
7 this thing through or move it forward.

8 MR. BLOCK: Perhaps maybe the best thing to
9 do is to very quickly go over the four overheads, to talk
10 to you about the two issues, what can you do in the regs,
11 and what impact that does or doesn't have on diversion.

12 With your indulgence, if you want me to --
13 It's a difficult thing to answer in one sentence, I guess
14 is the problem, because it's somewhat complicated.

15 CHAIRMAN EATON: I beg Mr. Ray's indulgence
16 and do it quickly because they may want to comment on
17 that.

18 MR. BLOCK: One of the reasons I can go
19 through this very quickly is because Yvonne has, in fact,
20 touched on a couple of these issues.

21 One of the things that's driving this, and

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22 these are the handouts that you got a little bit earlier
23 today. One of the things that drives this particular
24 issue in terms of how it affects diversion is statutory
25 provision that basically says what counts as disposal and

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1 what goes into a permitted disposal facility. Of course
2 the reason that's important is because how we measure --
3 and I'm just going to talk about the year 2000 -- how we
4 measure for simplicity, how we -- how we measure in 2000
5 is looking at the base year in '90 and what the percentage
6 reduction since then. And we are in -- although we
7 started out with generation, we're in a disposal reduction
8 mode in terms of figuring these things out.

9 So there's two different variables in terms
10 of dealing with how that putting these facilities in
11 notification tier or in a permit tier work. The two
12 variables are where was this going in 1990, was this waste
13 going into a permitted facility or unpermitted facility;
14 and then looking in 2000, will it be going to a permitted
15 or an unpermitted disposal facility. And it's important
16 to remember that permitted versus -- it it's not permitted
17 it does not necessarily mean not regulated.

18 We're talking about permit tiers versus
19 nonpermit tiers. So the permit tiers are the full -- we
20 don't have any standardized in these regs -- but the full
21 and registration tiers. And then the nonpermit tier is

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22 notification excluded. So if it's not in the notification
23 tier, it's not a permit, by statute it's not subject to
24 the fee, and also by statute it's not counted as disposal.
25 BOARD MEMBER JONES: Or diversion.

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1 MR. BLOCK: Well, see that's the
2 interesting question because without something more,
3 because we're on a disposal -- if we're just looking at
4 the reporting year because we're on a disposal reduction
5 setup and statute, if it's not going into a permitted
6 disposal facility, it's not counted as disposal. It's
7 going somewhere else. It's sort of in limbo. It's
8 essentially counted as diversion, but it's more
9 complicated than that because it depends on what was in
10 the base year and what wasn't.

11 BOARD MEMBER JONES: Right. But in 1990,
12 the same rules applied basically without AB 939. If dirt
13 and rock went into a landfill, it was not disposed of. It
14 wasn't counted at disposal, we didn't pay fees on it, we
15 used it to stockpile and for cover and for structure, so
16 that the whole key to this thing is did it go in as
17 disposal. One of the issues yesterday, one of the cities
18 that claimed dirt as diversion. It's insane because it
19 never went to a landfill for disposal.

20 So this is the same argument, and all I'm
21 trying to say it is inert, so it's not like we have this

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22 whole huge wastestream out there that one is paying fees

23 and one is going to a landfill. Because if it went to a

24 landfill, it went as beneficial use. If it went across

25 the street into somebody's lot that said clean fill

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1 wanted, it didn't pay a fee and didn't do those things.

2 So that part I'm not too worried about.

3 That's why I'm suggesting the notification, but I don't

4 want to preclude us from being able to deal with the SB

5 515.

6 MR. BLOCK: And that's exactly what this

7 next one shows for the vast majority of these sites that

8 you were just talking about, if these were going to

9 unpermitted facilities in '90 -- and this is the issue

10 that Yvonne Hunter raised -- if we were to require permits

11 for those sites in '90, it would be counted as disposal.

12 But if we didn't, if we put that in a notification tier so

13 it's not a permit, if they weren't counted in '90, they

14 wouldn't be counted in 2000. That's the easier part of

15 the equation.

16 The hard part of the equation,

17 unfortunately, is we know of at least one facility that

18 was permitted in 1990 in the L.A. area, and at this point

19 we don't know how many were there, so that obviously gets

20 more complicated. And that's the point I wanted to get

21 to. It's hard to answer your initial question because

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22 there would be some effects there that we're not sure of

23 exactly what those are at this point.

24 And very last one, and I'm done with this.

25 So I can -- hopefully that's fast enough. One of the

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1 things I'm talking about this conceptually, this is all
2 based on assuming the amounts were going in 1990 and 2000
3 weren't changing. Again, it's mostly just to that one
4 facility. We don't know what those numbers are. There's
5 variations there. We also have some issues that have
6 surfaced over the last few years. Some of these
7 facilities in their solid waste generation studies
8 reported waste going to unpermitted facilities as disposal
9 in their base year, and some of them that were going to
10 the only permitted facility were not reporting those as
11 disposal in the base year because there was no Disposal
12 Reporting System. I don't raise those issues to say that
13 what you're suggesting isn't something that is appropriate
14 and would take care of a vast majority of things, but it
15 gets a little complicated because at this point in time we
16 don't know exactly the impact on all of those facilities
17 in terms of tonnages and the like.

18 And so I don't know if that was helpful or
19 not.

20 CHAIRMAN EATON: If you don't know what the
21 impact is, we shouldn't be passing any kind of regulations

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22 that may, even as well intentioned as they might be, I'm

23 not interested in hurting or helping. I'm interested in

24 having them basically go through, and if we don't know,

25 perhaps the best thing, the prudent course is just find

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1 out in either working group or whatever we need to do and
2 figure out how it works. And maybe that's the best thing,
3 Mr. Jones. But thank you Elliott.

4 Now, Mr. Ray, we'll see if we can't get you
5 up here.

6 MR. RAY: Thank you. Charlie Ray with the
7 Construction Materials Association of California. We
8 represent aggregate and ready mix producers throughout
9 northern and central California.

10 As I've probably said other times, our
11 members, as a side activity to their main business, but an
12 important activity to help them achieve their reclamation
13 requirements, they use the inert materials to fill mine
14 pits. When I say inerts, it's primarily concrete,
15 asphalt, and dirt.

16 We believe this is a good activity that
17 helps reclaim the land to a second use. We believe that
18 it's something that's currently overseen by the Water
19 Board to review and assess the activity and determine
20 whether the permit's monitoring and inspection
21 requirements are needed.

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22 As currently proposed, we oppose the
23 registration tier level permitting for the mine
24 reclamation, inerts used in mine reclamation. It requires
25 fees and permits and record keeping that would affect our

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1 operations, add cost, personnel and equipment, and a
2 number of them have indicated they would not continue this
3 activity if this registration tier were continued.

4 I'm not sure exactly what -- I know Marcia
5 read through a lot of comments. I'm not sure what your
6 position is yet on those, but I just -- she mentioned
7 lowering the level to a notification tier. And I think
8 we've taken a look at that, and again, we would have some
9 concerns with the record keeping provision, that we think
10 that would require duplicate records or additional records
11 and affect the operations.

12 She mentioned there might be a way to do
13 that, or there was a comment to try to do that in a way
14 that wouldn't provide additional reporting requirements or
15 record keeping requirements, that maybe we could, if we're
16 giving information now or we're giving records and reports
17 to the Water Board, those would suffice if we could pass
18 those along also as a way to -- pass those along to the
19 LEAs. If something like that were possible, I think
20 that's something our members could accept.

21 I think those are my comments at this time.

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22 If there's any questions.

23 CHAIRMAN EATON: Thank you, Mr. Ray.

24 Greg Pirie.

25 MR. PIRIE: Greg Pirie, Napa County LEA.

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1 Sorry. I had to take one of the San Diego City LEAs to
2 the airport.

3 I don't want to repeat anything that was
4 said. Let me know if I do.

5 BOARD MEMBER JONES: You're the second
6 speaker.

7 (Laughter)

8 MR. PIRIE: Perfect. You know, the LEAs
9 just within the last three to four weeks have taken a long
10 look at these, either through the EAC, Enforcement
11 Advisory Council, which represents most of the state LEAs,
12 the Bay Area LEAs. I've seen the comments from the
13 Northern California Technical Advisory, and you can see
14 there's a lot of areas that we see that for the entity
15 that would have to implement the regulations, whether it's
16 going through the definitions or the interim permit, which
17 I'm sure was explained earlier, would be very hard to
18 implement once the facilities would be in place.

19 First of all, with the interim permit, as
20 I'm sure was discussed earlier, the LEA would in such have
21 the ability just to approve a facility without a lot of

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22 research that they would have to. That would be submitted

23 to them to approve, so it would be a really hard deal for

24 us to actually implement.

25 Other areas that were really difficult to

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1 understand were just the definitions. We're looking at
2 just a solid waste definition, which includes a lot of
3 things plus construction and demolition. Then you look
4 through the regulations and you'll find the C&D debris,
5 the C&D waste. You'll find solid waste definition, inert
6 debris, inert waste. And it was very difficult to find
7 out that if we actually had an application come through,
8 how would we actually fit all of these definitions, which
9 we think should be just under solid waste, which probably
10 could be going to a transfer station, and those
11 regulations, how would those interplay? And we found it
12 very, very difficult.

13 A couple parts that I could get specific
14 on. Definitions, under inert debris and inert waste, and
15 assuming that the inert debris and inert waste would be
16 solid waste, this section I've outlined here is under line
17 40, Type A or Type B. The general term inert debris is
18 used, and it says the inert waste refers to inert debris
19 which is destined for disposal. Now going through inert
20 waste, inert debris, it's kind of taking two definitions,
21 inert waste, inert debris, it's saying they're the same

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22 thing. The only difference is that what are you using it

23 for, it's not what the substance is.

24 And another one might be under processing,

25 which would be on my version, that September 1, processing

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1 needs a controlled situation recovery volume reduction or
2 recycling; instead of solid waste, putting debris in
3 there. Are we actually going to deal with a material as a
4 solid waste or a debris? And once you get to the permit
5 process, trying to figure out what's debris, what's solid
6 waste, we think it's going to be really difficult.

7 So to make it short, my recommendation
8 would -- I couldn't see another even 15-day period for
9 review being enough to actually go through and organize
10 all this and make it workable. I would recommend holding
11 off on the regulations to at least have the working room,
12 even with interim permits where it could affect the staffs
13 of environmental health.

14 It could be a huge subject, so I recommend
15 holding off on the regulations.

16 CHAIRMAN EATON: Thank you. Any questions
17 of Mr. Pirie?

18 Mike Mohajer.

19 MR. MOHAJER: Thank you. Mr. Chairman,
20 Members of the Board, after finally two full days of
21 sitting back in the back of the room, no blood

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22 circulation --

23 (Laughter)

24 MR. MOHAJER: I'm not saying that I'm old,

25 but I certainly feel that way at the end of the second

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1 day, but anyhow, thank you very much for the opportunity.

2 And I really want to thank Marcia Kiese for trying to
3 write this stuff and going through the misery of trying to
4 be responsive to 7,000 different types of comments and
5 jurisdictions, so. I do appreciate that I just want it to
6 be a matter of record.

7 As you know, Mr. Chair, we have submitted
8 comments back on February of 1999 and also September 7,
9 1999. I just want to make sure that's for the records.
10 And today, basically I was going to talk about the actual
11 resolutions which was the Resolution Number 483, but
12 before I do that, there are a couple of issues that were
13 brought to my mind as I was looking at the handouts that I
14 got about an hour ago.

15 I'm pretty much really not prepared to
16 discuss the item that I just got right now, but one item
17 that you should recognize once you adopt your regulations,
18 and there are certain facilities that are not permitted
19 now. They become a permitted disposal facilities. That
20 certainly will impact the Countywide Siting Element, and
21 you know that Los Angeles County Countywide Siting Element

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22 took me three years. I had to conduct over 270 days of
23 public information meeting and comment period. I had to
24 prepare the full EIR.

25 So recognizing that fact, when I read the

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1 statement over here that it says that permit issued in 90
2 days or 120 days, that is not going to happen because the
3 LEA has to make the determination with consistency with
4 the Siting Element, and a whole bunch of requirements that
5 the Siting Element has to go through, including approval
6 of the majority of the cities containing the majority of
7 the cities' populations.

8 So really this regulation has a tremendous
9 impact on local government, tremendous impact, and I'm not
10 talking about -- I'm local government. I'm not in waste
11 industries, and you have to recognize that the siting
12 element by itself, it cost us over \$1.5 million to
13 prepare. It has tremendous economic impacts as well, so
14 please do pay attention to that aspect of it.

15 And the other discussion that came out,
16 remember, there are a lot of inert waste facilities in
17 southern California and there are only three that have a
18 Solid Waste Facility Permit, and those three are in Los
19 Angeles County, but none in the unincorporated area of Los
20 Angeles County. When I talk about the inert waste
21 landfill, I'm talking as a whole.

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22 And the New Way landfill that Mr. Jones
23 referred to, that was one of the facilities that was
24 permitted in 1996. The base year was 1990, and the study
25 was done in 1990, so the whole issue was brought up in

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1 something that was permitted in 1996, in essence six years
2 after the fact. And if you go and look at the records, at
3 least the letters that I have with my signature, very
4 specifically raised the issue as far back as three and a
5 half years ago. So that means it wasn't anything that was
6 new.

7 But saying that, it was very refreshing and
8 I do appreciate what I heard that at least we're trying to
9 work together and address the issue. And I'm offering my
10 full assistance, if it is okay, to work with the staff and
11 attend all the workshops. And I would be more than happy
12 to even sponsor the workshop, if that's what the Waste
13 Board desires, but this is one issue that is of major
14 concern to the County, as well as the cities of Los
15 Angeles County and other jurisdictions in southern
16 California, that they use the facilities in the county.

17 And the offer is there for the matter of
18 record, that we'll be more than happy to work with the
19 Waste Board and the Waste Board staff (inaudible).

20 Now going back to the resolution that I was
21 going to discuss, 483, there are a few statements that

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22 ultimately when the Board makes a decision to adopt,
23 whether it is today or later on, that I would like to --
24 at least I have some concern with, and I'm reading on page
25 2 of the Resolution 483, and I'm going through the

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1 whereas, the second whereas that says, "Whereas, the Board
2 has determined that the regulations do affect the local
3 mandate already imposed on local government agencies by
4 decreasing levels of service," I certainly raise issue
5 with the word "decreasing."

6 Moving to the next item, "Whereas, the
7 Board has determined that the proposed regulations will
8 create no costs or savings to any state agency," I
9 certainly take position with that as well. If the state
10 agency going to be charging \$1.34, that is certainly a
11 saving of revenue.

12 The next whereas, "Whereas, the Board has
13 determined that the proposed regulations will have no
14 significant adverse effect on housing costs," well,
15 certainly renovating a depleted gravel pit will impact the
16 land use control of the local agency and could impact the
17 housing as well.

18 The next whereas, "Whereas, the Board has
19 determined that the proposed regulations, rather than
20 having an adverse economic impact, may provide economic
21 relief to solid waste operations classified as a small

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22 business," I certainly don't agree with that.

23 The next whereas, "Whereas, the Board has

24 determined that the adoption of the proposed regulations

25 will not have a cost impact on private persons or

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1 enterprises," well, certainly if the industry has to pay
2 additional fees, that is an economic impact. So how could
3 that determination be made?

4 "Whereas, the Board has determined that the
5 proposed regulation will not have an adverse economic
6 impact upon California businesses' ability to compete with
7 out-of-state businesses," I certainly disagree with that
8 statement as well.

9 And moving down to the last whereas on that
10 page, it says, "Whereas, the Board has determined that no
11 alternative considered would be more effective in carrying
12 out the purposes for which this action of proposed or
13 would be as effective and less burdensome to effected
14 private persons," certainly this proposed regulation will
15 create much, much more bureaucracy for local government
16 and the loops that the local government has got to get
17 through.

18 But certainly I would hope that the
19 resolution alternatively would be devised to be a little
20 bit more responsive. So with that in mind, I would like
21 to, in our local task force, they meet on the third

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22 Thursday of each month. Hearing what I heard today, that
23 maybe next task force meeting -- not in October, but for
24 November would be November 18, and our task force meets at
25 1:00 in the afternoon at the Public Works headquarters --

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1 it would be really appreciated that by then maybe the
2 Board has made some decision in the proposed regs, that
3 either the Waste Board Members or a member of the staff
4 would be attending our local task force and sort of
5 provide a little bit of overview of the direction the
6 Board has elected to go from there.

7 With that in mind, I'm happy to answer any
8 questions. If not, I'll just go back to my seat again.

9 Thank you very much.

10 CHAIRMAN EATON: I take it by your comments
11 that as the regulations are currently written, that you
12 are not supportive of some of those.

13 MR. MOHAJER: That is correct. Not all,
14 some.

15 CHAIRMAN EATON: Some. I want to be clear,
16 and it's not to put you in a corner because I think even
17 though you and I may have disagreed on some things, I
18 think that's part of the problem, so no one gets hurt in
19 any of these things, and I just wanted to find out.
20 Basically what I'm hearing, I just realized that there may
21 be many more people who oppose these regulations for

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22 different reasons, and I just want to make sure that I had

23 you in the right category.

24 MR. MOHAJER: Believe it or not, Mr. Chair,

25 we agree on much, much more than what we don't see exactly

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1 the same, but just for the matter of record.

2 Thank you very much.

3 CHAIRMAN EATON: Thank you very much.

4 I think Lisa Wood went back to San Diego.

5 MS. WOOD: No, she didn't.

6 CHAIRMAN EATON: All right. I should go.

7 I'm sorry.

8 MS. WOOD: We welcome you in San Diego

9 anytime.

10 CHAIRMAN EATON: You should have been --

11 well, you probably were here yesterday.

12 MS. WOOD: I was not. Lisa Wood. Pleased

13 to be here. Good evening, Mr. Chairperson and Board

14 Members, staff, and audience. I had these really neat

15 comments written out. I was getting compliments from the

16 people sitting around here on my penmanship. I've got

17 these lines and cross-outs all over the page.

18 (Laughter)

19 MS. WOOD: So I'll try and make some sense

20 of what I have on this piece of paper.

21 BOARD MEMBER PENNINGTON: Sounds like our

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22 regs.

23 (Laughter)

24 MS. WOOD: I'm getting to that.

25 (Applause)

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1 BOARD MEMBER JONES: Are you making a
2 motion?

3 (Laughter)

4 CHAIRMAN EATON: I think the motion was to
5 start all over again, and as long as no one gets hurt,
6 it's fine with me.

7 MS. WOOD: I did have a CEQA issue, and I
8 talked with Jeannie Blakeslee this morning when I got
9 here, and she expressed a desire to address my concerns.
10 And I think one of my concerns has arisen
11 already in the discussion of the interim permits because
12 the interim permits appear to me to be nondiscretionary,
13 so that normal language of impact because the subsequent
14 action would require CEQA review indicates that those
15 interim actions would not have a subsequent CEQA review.

16 I know that just this morning you got some
17 alternative language on the interim permitting and I know
18 that the interim permitting is being discussed, but just
19 keep in mind that there are CEQA indications in terms of
20 how you handle the interim permitting issue. It's a
21 little bit of a technical issue.

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22 Also just a little sideline on the CEQA is
23 these issues, cumulative, indirect impacts on landfills
24 are also probably warranting consideration in the CEQA
25 document. The CEQA document should be an informational

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1 document that includes that information.

2 My main point, and I have submitted written
3 comments on this, is about the 11th hour switch to local
4 jurisdictions that are trying to comply with AB 939. The
5 rules are changing, and it's rather late in the game to
6 change the rules. So this moving target in terms of what
7 the regulations are, and I don't know in terms of the CEQA
8 document since the regulations keep changing, what it is
9 the CEQA document was reviewing. I don't know how that
10 effects that, but that's something that Legal staff might
11 want to consider.

12 But the moving target in general obviously
13 poses a big difficulty to jurisdictions as they're trying
14 to comply with AB 939. If we know what the game rules
15 are, we can target our programs accordingly. And of
16 course, our goal ultimately in the game is to actually
17 accomplish diversion and to keep materials out of the
18 municipal solid waste landfill, which was the goal of AB
19 939.

20 One of the unintended consequences, and I
21 think you may have already gotten a note about, is that

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22 this might have some difficulties in terms of people --

23 might result in difficulties in terms of people diverting

24 materials, particularly since C&D recycling facilities, I

25 understand, would go in the registration tier, which could

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1 raise the cost associated with C&D recycling and result in
2 additional materials going into the landfill.

3 With regard to a lot of this type of
4 regulation, we do a lot, speaking as the local government,
5 as you know, I wear a lot of different hats. I'm here
6 representing the City of San Diego. I'm also here
7 representing the Technical Advisory Committee, which all
8 the jurisdictions in the County and the County have given
9 me authority to speak on their behalf with regard to these
10 issues, and also the Sustainable Development Green
11 Building Group, and you're welcome to have a workshop down
12 in our green building, not that I'm hinting or anything.

13 But you know, we deal with these sorts of
14 local land use issues. There are a lot of uses that we
15 need to regulate on a local level, that we do regulate on
16 a local level, and I think that's an issue of
17 consideration when you're trying to address these from a
18 state level. I think this is something that's more
19 appropriately handled at the local land use level.

20 With regard, going back to AB 939, to the
21 need for additional documentation, obviously we've already

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22 discussed base year adjustments. We've discussed siting
23 element modifications, and NDFE amendments. This is going
24 to be an issue.

25 I totally concur with Mr. Jones. If it

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1 never went into the landfill, it shouldn't be counted, but
2 it should be the same in the base year and the reporting
3 year.

4 So that's the best I can make of these
5 scribbles. I hope some of that was intelligible and I
6 hope that helps.

7 Thank you very much.

8 CHAIRMAN EATON: Thank you. I would like
9 to ask staff a question.

10 If we were to not adopt the regs at all and
11 start all over because we missed the one-year period, what
12 if any, adverse impact would it have on the industries who
13 either spoke to us today or come back, or can the Board do
14 anything to prevent any adverse impact, in other words?
15 Because quite frankly, we have a lot of people who still
16 want to speak, but I think there's a sense here that
17 something isn't quite cooked yet, and I don't -- I think
18 it's coming from all different angles, and it doesn't take
19 long before you figure that, not to reflect upon anyone,
20 but I also don't want to just have any adverse impact if
21 we do a motion. So I'll address that to you, Ms. Nauman.

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22 MS. NAUMAN: I'm sorry, Mr. Chairman. I

23 missed some of your comments. I was conferring with

24 staff.

25 CHAIRMAN EATON: If we don't adopt these

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1 regs today or anything and just start all over again, is
2 there any adverse impact to either local jurisdictions,
3 businesses -- be they mining, be they construction
4 companies, rock and gravel, some of the recycling?

5 MS. NAUMAN: Well, it would just clearly
6 maintain the status quo and put you back to where this
7 process began. Many years ago, this Board determined that
8 they were going to slot into the tiered system various
9 portions of the wastestream, and we have done that for
10 virtually everything except C&D and biosolids. So it
11 would delay completion of sliding all the portions of the
12 wastestream, which presumably have been determined by this
13 Board as necessary for health and safety reasons.

14 So that's the impact. The potential impact
15 is on health and safety, not necessarily to any particular
16 operation.

17 BOARD MEMBER PENNINGTON: Mr. Chairman.

18 CHAIRMAN EATON: Mr. Pennington.

19 BOARD MEMBER PENNINGTON: Let me just ask
20 Ms. Nauman. Though you would have a year's worth of work
21 sort of being down the drain, but not necessarily down the

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22 drain, it doesn't necessarily mean that it would take you

23 another year before we could have some of these things

24 worked out; correct?

25 MS. NAUMAN: I think, Mr. Pennington, as a

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1 practical matter, our experience has been with most reg
2 packages six to nine months and usually 12 months,
3 particularly if we incorporate the types of workshops that
4 you're talking about and we conduct that on a statewide
5 basis. I'm not that optimistic that we would be back here
6 much before nine to 12 months, and others may wish to
7 comment based on their experience.

8 BOARD MEMBER PENNINGTON: It seems like
9 you've got a lot of it written and a lot of it there is
10 concurrence on, and yet there are a lot of other areas
11 that there seems to be some concerns.

12 MR. CHANDLER: Is the proposal to
13 essentially start the whole entire package over for the
14 entire breadth of what we have before us and what has been
15 reviewed, or for this particular area of Type A inerts and
16 the impact and lack of clarity we have on everything from
17 diversion to what is the appropriate permitting tier for
18 that portion of the construction and demolition
19 wastestream Type A inerts? Because --

20 BOARD MEMBER PENNINGTON: I'm not sure
21 there's a proposal here.

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22 MR. CHANDLER: I'm asking the question.

23 BOARD MEMBER PENNINGTON: But I think that

24 the Chairman and I, and I sense that Mr. Jones feels, that

25 gee, we've got a lot of area here that still needs some

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1 work and maybe we should start in again.

2 CHAIRMAN EATON: I think it's just the
3 general uncomfortableness about things being jammed, and
4 not through any fault, but just a level of
5 uncomfortableness, not knowing where the impacts are. And
6 maybe we have heard these in the past and some of the
7 other things, but based on some of the testimony today and
8 just generally. It's my own level of uncomfortableness,
9 and I'm pretty good at digesting stuff. I'm having a
10 hard time, and I don't want to speak for anyone else, but
11 there seems to be a lot of uncomfortableness around.

12 As long as there's no adverse impact all
13 the way around, I know we can start all over again, but
14 sometimes that's the only way to put it together. I don't
15 know if you can cut it out. I'm not sure I know what we
16 would be cutting out.

17 BOARD MEMBER PENNINGTON: I think that's
18 part of what we're faced with today. We have attempted to
19 do that.

20 CHAIRMAN EATON: Squirrely.

21 BOARD MEMBER PENNINGTON: Squirrely.

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22 CHAIRMAN EATON: If we do something and say
23 to the audience here's what we're cutting out and here's
24 what it is and could comment upon that, then you've got at
25 least a dialogue and a notice to some degree. If you

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1 don't, I think they're going to say what really took place

2 and --

3 BOARD MEMBER JONES: Mr. Chairman.

4 CHAIRMAN EATON: Mr. Jones.

5 BOARD MEMBER JONES: I think one thing, and

6 I think this is important. Staff has gone along and done

7 this for two years and has done a good job, and most of

8 the people in this audience have participated. This thing

9 went upside down when we looked at the facilities that

10 were supposed to be paying fees, and then it became a

11 whole universe of facilities that could be impacted to pay

12 fees, and that's where this -- that's why this thing is

13 screwed up right now.

14 It doesn't have anything to do with the

15 work the staff has done or the work that the stakeholders

16 have done. It's around us trying to enforce the law. The

17 law was clear, now it's been changed. Unfortunately,

18 under the timing issues with whoever the heck it is, OAL,

19 we may have to start this thing all over again.

20 I'm not sure that staff is going to

21 understand that it's for no other reason than this \$1.34

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22 and this diversion credit, and they need to understand

23 that. Because I'm not comfortable and I don't know how to

24 fix this in a matter of a day or two.

25 I will say one thing, though. It's always

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1 -- it's been my intent since day one, and I think all the
2 Board Members, to deal with the health and safety issues,
3 and the health and safety issues became crystal clear.

4 And I've said it before, every time we have
5 one of these workshops, is that when Ralph and I went to
6 Washington D.C. to ASTSWMO, the concerns issued by all of
7 the states when USEPA said don't worry about C&D and
8 inerts, people flew out of their chairs and said that's
9 where we're damaging the environment in our state. We
10 have four landfills, three of them are C&D, one is MSW,
11 and it's the C&D sites that are polluting the state.

12 So what we decided that we needed to do was
13 make sure that we had the appropriate health and safety
14 issues taken care of in how we move forward. This thing
15 has changed and it's changed over fees and diversion. It
16 hasn't changed over what the intent was.

17 If we are going to get into those
18 discussions, if we are going to postpone this, delay it,
19 whatever we're going to do, we need to have three other
20 parties in all the workshops. We need to have the Water
21 Board at the workshop, because it's our contention at the

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22 Waste Board that their definition of inerts does not
23 protect health and safety to the level that we want it to
24 because it includes 10 percent residual which, depending
25 upon the size, could be a lot of garbage. It also

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1 includes gypsum and wallboard, which they're finding is a
2 source of pollution at these sites.

3 So we need to make sure they're here so
4 when somebody says it's a mine reclamation project and all
5 this stuff can go in it because it's okay, we need to have
6 the discussion from Department of Conservation understand
7 what the appropriate level of oversight is. And if we're
8 willing to go down that road to do that, in conjunction
9 with the stakeholders and in conjunction with the staff
10 that's done a great job on this thing, then I'll be the
11 first one to support that, but only based on the fact that
12 we include those other entities.

13 Because I get a little frustrated every
14 time we have a meeting and we bring up something, and all
15 of a sudden everybody tells us -- and it could be any
16 issue, it's not just this one -- that all the other
17 experts in buildings and other parts don't think there's a
18 problem. We heard it with RSU. We heard it with a whole
19 heck of a lot of things. It's always the experts that are
20 in another building.

21 So if we're going to do this, we need to do

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22 it with them at the table and get through it. You know, I
23 mean get through it, and remembering -- and staff knowing
24 this was about the fees. This thing went sideways because
25 of the fees, not because of your work. Most people agreed

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1 where we were going until it became the fee issue.

2 So that being said -- I mean, I have no
3 problem with going down, working on this thing again with
4 all these folks and just moving this thing forward.

5 CHAIRMAN EATON: Aren't you going to make a
6 motion?

7 BOARD MEMBER JONES: Mr. Chairman, I'll
8 make the motion that we -- wait a minute. There's
9 somebody in the back, Mr. Chairman.

10 CHAIRMAN EATON: Yes. Sure. Please come
11 forward, but I would also try to say I'm happy -- it's not
12 to cut you off, but one of the things we would be doing
13 today is also having another opportunity where there would
14 be workshops. I know you've come here, but one of the
15 reasons for the motion is not to delay and drag it out for
16 another half hour. The result is going to be that we're
17 not -- I'm not ready to support these regulations. I
18 would be happy to accept the comments. I didn't mean to
19 not hear you, but what I would also note is that you've
20 been here all day, and if we're going to finally come to a
21 result -- that's not to cut you off, but please.

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22 MR. LIM: My name is Rick Lim, and all I
23 wanted to do was read a statement. If you prefer, I could
24 just hand it to you. It's addressed to you. I would like
25 to have it on the record here regarding this, and I

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1 prepared it last night after hearing from Mary Coil and
2 Water Resources people that you were making some changes.
3 So --

4 CHAIRMAN EATON: You heard --

5 MR. LIM: The Board wished to consider
6 changes.

7 CHAIRMAN EATON: Please feel free to read
8 in.

9 MR. LIM: Let me get my glasses on.

10 I'm pleased to hear of the changes to the
11 characterization -- and I realize this may be misspeaking
12 here -- of Type A and Type B inert materials; that is, the
13 removal of wood ash from biomass conversion, treated
14 industrial waste, auto shredder fluff, and dewatered
15 bentonite-based drilling mud. I would like to thank
16 Ms. Coil, her staff, Ms. Babcock, Ms. Haven, Mr. Fuller,
17 Mr. Wasoski, and the Water Resource Control Board for
18 demonstrating good judgment.

19 Had no changes been made to the proposed
20 regulation, then consequently starting the whole process
21 over. The Board may have approved and incorporated

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22 another set of bad and criminal regulations like the base

23 alternate daily cover regulations including C&D, et al.

24 Such step is a step in the right direction.

25 Since March of 1999 in an attempt to

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1 correct what I considered to be bad policy has escalated
2 into a campaign to arrest illegal and very dangerous
3 regulations within the California Code of Regulations.
4 The further I progressed, the more covert the regulations
5 became and the more apathy -- the more apathetic and
6 evasive several local enforcement agencies behave.

7 For your information, Mr. Porteous has a
8 copy of most of my correspondence since June 1999. This
9 was brought to the attention of the Board recently, and
10 the letter cc'd to Mr. Eaton. At a minimum, the alternate
11 daily cover regulations constitute a criminal action
12 through negligence and poor stewardship. The worst case
13 scenario is these regulations constitute a deliberate,
14 intentionally inspired criminal action.

15 It would appear the Board is beginning to
16 address their problems. For this, I am encouraged. In
17 conclusion, I would like to reiterate the changes to Type
18 A and Type B inert materials' characterizations, which
19 apparently isn't quite accurate, is a positive step to
20 mitigating the problems of California Integrated Waste
21 Management Board faces, yet I caution you I will not stop

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22 until the regulations are fixed and any fallout is

23 properly addressed.

24 Thank you.

25 CHAIRMAN EATON: Thank you.

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1 I have a number of speakers. Paul Manajan
2 (phonetic), Pat Shanks, Chuck Helget, Evan Edgar, Chuck
3 White and Jeff Harvey. If any of them would like to make
4 a comment before the motion.

5 Yes, ma'am.

6 MS. SHANKS: Pat Shanks.

7 CHAIRMAN EATON: Please come forward.

8 MS. SHANKS: Good evening, Mr. Eaton and
9 Members of the Board.

10 I think that what I would like to do is
11 make a suggestion here, which is where I thought Mr. Jones
12 was going initially but then -- and perhaps we can return
13 to that proposal that you were earlier making.

14 I think there are basically three questions
15 here. There's the question of the regulatory tier, what
16 is the appropriate level of regulatory oversight for this
17 Board to exercise over the facilities that are covered by
18 the C&D regulations, and specifically, the mine
19 reclamation sites which use only Type A as more recently
20 defined to be truly inert material. Second, there's the
21 question of what level should these facilities be subject

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22 to fee, and if so, what level of fee. And third, there's

23 the question of what impact the regulations would have

24 with regard to diversion.

25 I think that the subject of these

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1 regulations should be limited to the appropriate level of
2 regulatory oversight of the covered operations and
3 facilities. The fee issue was dealt with, as Mr. Jones
4 pointed out, in SB 515; and SB 515 provided for a two-year
5 period within which to perhaps develop new legislation
6 that would allow us to determine, based upon the
7 appropriate level of regulation, what the appropriate
8 level of fees should be for those facilities, if any.

9 So I think the fee issue can be set aside.
10 It does not need to be addressed in connection with this
11 regulation.

12 The third issue, diversion, should also be
13 put aside. The level of regulatory oversight should not
14 be determined based upon how it impacts diversion. That's
15 a separate question, and I think that what we ought to be
16 looking at is how should we regulate these facilities and
17 operations, and then later work on the diversion issues
18 and make it clear that your decision with regard to the
19 level of regulatory oversight has no impact on AB 939
20 issues.

21 Now, I think if you separate the issues

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22 that way and if you make appropriate changes in the
23 regulations, that is, go back to your -- a notification
24 tier for the mine reclamation sites, you would be able to
25 move forward with this package with an additional 15-day

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1 comment period. And that way the staff's work over the
2 past three years would not go down the drain, and the work
3 of all the other people in this room who have been working
4 on this during this period would not go down the drain.
5 You would accomplish your development of appropriate
6 regulatory oversight to address the health and safety
7 issues, which are the principal concern for construction
8 and demolition debris facilities, instead of putting that
9 off for another year or two.

10 So that's what I would suggest. Let's
11 separate the issues, deal only with regulatory oversight
12 in this regulatory package, and then with regard to this
13 package, so that you can do it with the 15-day period and
14 not have to start all over again, is to take the mine
15 reclamation sites that use Type A material and go back to
16 a notification, EA and notification tier. If you go back
17 to the notification tier, that's sufficiently related to
18 your original notice of proposed rulemaking to allow you
19 to make that change with an additional 15-year comment
20 period. I mean an additional 15-day comment period.

21 (Laughter)

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22 BOARD MEMBER JONES: It seems like it's

23 been 15 years.

24 CHAIRMAN EATON: It could be.

25 MS. SHANKS: In our comments to you, which

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1 I believe all of you have received, we actually proposed
2 specific text which could be used as the basis for the
3 modifications that are needed in order to accomplish the
4 notification tier. And if you don't have those sections
5 with you, I have additional copies here which can be
6 handed to the Board. I didn't copy the entire set of
7 comments, but just Section 3 which has the specific text.
8 I'm happy to review that text with you now if you wish,
9 or I can deal with these issues on a more general level.
10 Would you like me to walk through the text changes that
11 would accomplish the EA notification tier?

12 CHAIRMAN EATON: I think that's really your
13 choice, Ms. Shanks. I can assure you that, at least from
14 my perspective, it may be more appropriate based upon
15 what's going to take place with the motion that they be
16 raised when that takes place in terms of the workshop or
17 workshops that may happen in the future, but I mean.

18 MS. SHANKS: That's assuming that you're
19 tossing out your regulatory package.

20 CHAIRMAN EATON: I can tell you right now
21 that this Board Member will not be voting for any package.

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22 So in essence, it takes four votes to approve a package,
23 so I think it's fairly safe to assume that may not occur,
24 if I'm any kind of vote counter, and in my past I have
25 been known to be able to count votes once in a while.

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1 MS. SHANKS: If that's a decision --

2 CHAIRMAN EATON: It's not a decision at
3 this time. I'm just trying to --

4 MS. SHANKS: If that's your view, then I
5 don't think it's worthwhile for me to take the time of the
6 Board to review this.

7 I would, however, ask you to reconsider
8 whether you can move forward by placing the mine
9 reclamation sites that use Type A material into a
10 notification tier and making it clear that that doesn't
11 impact either fees or diversion. I think on that basis
12 you could move forward with another 15-day comment period.

13 Thank you.

14 CHAIRMAN EATON: Mr. Jones.

15 BOARD MEMBER JONES: If nobody else is
16 going to speak, truthfully I think that one of the issues
17 is going to be covered if the Board goes along with my
18 idea by bringing DOC in here with the SMARA folks and
19 Water Board, is that some of those mine sites that are
20 being used for materials other than Inert A are going to
21 fall into a much higher regulatory package and maybe

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22 appropriately so.

23 I want to make a motion that we not approve

24 this reg package, that we start the process over again,

25 that we include representatives from DOC, SMARA -- they're

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1 in charge of SMARA -- representatives of the Water Board,
2 and reconvene workshops with the effected parties. And
3 let's figure out the appropriate level of health and
4 safety oversight; and where those facilities need to be
5 notification tier, they will be. And whatever other tiers
6 they need to be in, they will be. And that will be the
7 end of the discussion and we'll protect the health and
8 safety of the people of the state of California.

9 BOARD MEMBER PENNINGTON: I'll second your
10 motion.

11 CHAIRMAN EATON: Before we vote, I should
12 say that I did receive a little note card from Yvonne
13 Hunter on clarifying an issue with regard to the impact if
14 we were to adopt the package that we have with regard to
15 the fee issue. Okay.

16 Mr. Jones moves, Mr. Pennington seconds
17 that the regulations not be adopted, that we start anew
18 and that we bring in the appropriate other entities, which
19 I believe are the Water Board, DOC, and any other entity
20 that is deemed appropriate.

21 Madam Secretary -- my, you've changed.

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22 (Laughter)

23 BOARD MEMBER JONES: So my motion was not

24 to do this, so the answer is yes. It's been a long two

25 days.

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1 BOARD SECRETARY: Board Members Jones.

2 BOARD MEMBER JONES: Aye.

3 BOARD SECRETARY: Moulton-Patterson.

4 BOARD MEMBER MOULTON-PATTERSON: Aye.

5 BOARD SECRETARY: Pennington.

6 BOARD MEMBER PENNINGTON: Aye.

7 BOARD SECRETARY: Chairman Eaton.

8 CHAIRMAN EATON: Aye.

9 BOARD MEMBER JONES: Mr. Chairman, just
10 briefly. Staff, honestly, this has turned upside down.

11 It is an unintended consequence of the fee issues. Your
12 work has been superlative. Your work has been good
13 through this process. Stakeholders have had great input,
14 but this is an unintended consequence.

15 CHAIRMAN EATON: Ms. Denise Delmatier was
16 requesting a short few minutes to speak on a subject that
17 she was unable to, so -- she did ask. I believe it's on
18 long-term storage of ADC.

19 MS. DELMATIER: Mr. Chairman and Members of
20 the Board, thank you very much for accommodating my
21 inability to attend the hearing yesterday. An emergency

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22 did come up that prevented me from attending yesterday,
23 but of all the people who testified yesterday, probably I
24 am the one person who should have testified due to the
25 fact that our permit application that came forward to the

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1 Board recently became the focal point for a lot of the
2 controversy surrounding the ADC alleged abuse and
3 long-term storage issues.

4 We also want to separate fact from fiction,
5 and I understand from the grapevine that that was the
6 context by which the whole discussion started; that what
7 we want to do here in addressing this issue is separate
8 fact from fiction. Quickly, I want to echo the sentiments
9 contained in the letter that was signed by many of the
10 both public and private landfill operators who came
11 forward in signing this letter to communicate to the Board
12 that, in fact, the alleged violations of ADC abuse and
13 overuse are unfounded. And we concur with staff's
14 analysis in the overuse and abuse issues, that these
15 allegations are primarily motivated by competitive
16 advantage concerns, and we disagree with the premise upon
17 which those issues were brought to the Board in the first
18 place.

19 In the letter itself, there was mention of
20 the issue that signatories of the letters strongly oppose
21 a one-size-fits-all, quote, and I put in large quotes,

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22 "industry standard" because obviously the signatories to

23 the letter are members of the solid waste industry, both

24 public and private, and we disagree with that premise.

25 So in transitioning then to the long-term

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1 storage issue -- and I'm sorry Mr. Roberti isn't here
2 because Mr. Roberti has coined a phrase which we find most
3 acceptable in categorizing or defining what the issue is,
4 and that is the inventorying of alternative daily cover
5 materials as opposed to a more negative term such as
6 stockpiling. We don't like that term, so the
7 inventorying.

8 CHAIRMAN EATON: He'll be back if you want
9 to hold your comment until he comes.

10 (Laughter)

11 MS. DELMATIER: As far as the inventorying
12 of alternative daily cover materials, we also want to
13 dovetail on that premise that we're opposed to a
14 one-size-fits-all approach, and that in looking at
15 specific facilities and specific, unique conditions
16 associated with those facilities, that the fundamental
17 concept of prescriptive standard versus performance
18 standard, that we've been there and done that for the
19 regulatory process, and for the regulatory process on AB
20 1647, that we encourage the Board as we bring permits
21 forward in the future that the one-size-fits-all approach

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22 is not the best approach. It's not what was envisioned in
23 1647, not envisioned in the regulatory package, and we
24 want to continue to urge the Board to use its discretion,
25 urging flexibility, and recognizing the very unique

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1 conditions that may exist at a specific facility.

2 So, basically that's it. I'm happy to
3 answer any questions. I know we don't have any questions,
4 so I'll get out of here, I think.

5 BOARD MEMBER JONES: The LEA for Solano
6 County was here yesterday and absolutely did a great job
7 of framing the issues from a health and safety standpoint.
8 This Board wasn't in a position at that item to offer a
9 policy, but what they did here was some pretty strong
10 discussion about what might be appropriate. And I don't
11 know how they characterize that, but I brought up that
12 issue that we had talked about on the pilot project and
13 said bring it in, let's leave it for five years, tear it
14 up and see what it looks like, monitor the gas that comes
15 off of it, all those types of things.

16 We did not give a policy, but we did --
17 they understood some direction out of that thing, and it
18 was unfortunate you had an emergency that came up because
19 it was a good dialogue.

20 MS. DELMATIER: And I did hear it was a
21 good dialogue. And I concur with what was relayed to me,

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22 that I think we're moving in the right direction, and
23 obviously when we get the permit back, we can address
24 those specific concerns. We don't need to get into that
25 today, but I was encouraged by the discussions that took

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1 place.

2 BOARD MEMBER JONES: My respect to you,
3 though, because you came forward late. I wanted you to
4 hear what was said, just so you heard it from the horse's
5 mouth.

6 MS. DELMATIER: I heard it elsewhere, but
7 thank you.

8 BOARD MEMBER JONES: I always rely on this
9 one.

10 (Laughter)

11 CHAIRMAN EATON: We'll take a one-minute
12 break.

13 (Brief recess taken.)

14 CHAIRMAN EATON: While we're waiting for
15 Mr. Jones and the last item of the day -- I believe it's
16 Item Number 76, if I'm not mistaken. Before we get to
17 Item Number 76, which is our last item for the day, I need
18 the Members' attention.

19 As you know, yesterday we had a meeting,
20 and part of that meeting was the items, I believe it was
21 64 and 65.

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22 BOARD MEMBER JONES: Items 65 and 66?

23 CHAIRMAN EATON: Items 64 and 65. I'd like

24 to make a motion that Items 64 and 65, dealing with the

25 revocation of waste tire hauler registration for Argonaut

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1 Enterprises and the denial of a waste tire hauler
2 registration for Nevada Tire, which was originally
3 scheduled to begin yesterday at 1:30 p.m., be continued
4 until October 21st at 9:30 a.m.

5 BOARD MEMBER PENNINGTON: Second.

6 CHAIRMAN EATON: All right. Mr. Eaton
7 moves and Mr. Pennington seconds that we move Item 64 and
8 65, scheduled for yesterday at 1:30, to October 21st at
9 9:30 a.m.

10 Madam Secretary, please call the roll.

11 BOARD MEMBER MOULTON-PATTERSON: I have a
12 question.

13 CHAIRMAN EATON: Sure.

14 BOARD MEMBER MOULTON-PATTERSON: I thought
15 we had talked about -- I was --

16 CHAIRMAN EATON: That's right.

17 BOARD MEMBER MOULTON-PATTERSON: I was
18 notified for dates, and that didn't work for me. And I
19 thought it was supposed to be the first week in November.

20 CHAIRMAN EATON: You're right. And I had
21 indicated to staff check with your office. I'll withdraw

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22 my motion until staff can get the date. You're absolutely

23 right. I had the first week in November as well, and they

24 told me they would check with each office.

25 MS. TOBIAS: That's a problem.

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1 BOARD MEMBER MOULTON-PATTERSON: They
2 checked with me this morning and said it would be the
3 first week of November. Is that okay with everyone?

4 MS. TOBIAS: The 21st is not open?

5 BOARD MEMBER MOULTON-PATTERSON: Not for
6 me, but that's okay.

7 CHAIRMAN EATON: Ms. Moulton-Patterson.

8 MS. TOBIAS: We went back -- I don't mean
9 to sound rude at all, but are you sure? We went back and
10 forth with your secretary, and she was positive that you
11 would be available the 21st, not the 22nd, but that you
12 were available the 21st.

13 BOARD MEMBER MOULTON-PATTERSON: She asked
14 me and I said, you know, November 1st was better. I mean,
15 maybe it was just a miscommunication. I can't be there,
16 but go ahead with it if that works for everyone else.

17 MS. TOBIAS: The issue here is one that --
18 what we were trying to do is -- as you know, if you
19 continue an item to a specific date, you don't have to
20 renotice it. And that's why we were trying to run around
21 and say get this done.

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22 BOARD MEMBER MOULTON-PATTERSON: She came

23 down at lunch and asked me.

24 MS. TOBIAS: If this is a point people are

25 really not sure about it, we'll let it go and renote the

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1 hearing, if that would be easier at this point.

2 CHAIRMAN EATON: I think it would be

3 because that was yesterday, and the beginning of

4 November -- I'll just withdraw the motion.

5 BOARD MEMBER MOULTON-PATTERSON: Sorry

6 about that.

7 CHAIRMAN EATON: Don't be sorry. Fine with

8 me. I was hoping to get a few days myself.

9 Final item, Item Number 76.

10 MR. AUSTRHEIM-SMITH: Good evening,

11 Chairman Eaton, Members of the Board my name is Steve

12 Austrheim-Smith of the Waste Prevention Market Development

13 Division.

14 Before you now is a request by staff for

15 the Board to approve modification and regulations for

16 fining late filers of newsprint certifications and

17 Kathleen Marsh will be giving you a very brief summary of

18 the item.

19 MS. MARSH: These proposed regulations --

20 CHAIRMAN EATON: Welcome back, Ms. Marsh.

21 Nice to see you again. For those of you who may not

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22 remember, she was the ultimate assistant for now Senator

23 Wesley Chesbro and moved into a different position after

24 the birth of her second child, I believe.

25 MS. MARSH: That's right. Thank

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1 you.

2 CHAIRMAN EATON: We welcome you back.

3 MS. MARSH: Thank you. My name is Kathleen

4 Marsh and I'm staff services analyst for the newsprint

5 certification program. These proposed regulations will

6 change Title 14 Section 17974 entitled penalties.

7 This is the first of a series of items for

8 newsprint, and next month you'll be hearing three

9 different items and the following, depending on what you

10 do, on the 20th of October and how you decide on one of

11 the items that will be heard next month. November you'll

12 hear either three, four or five different items.

13 The newsprint certification program

14 oversees the minimum content law of AB 1305 which requires

15 all print consumers to use post-consumer recycled content

16 newsprint. Printers and publishers within the state of

17 California must certify by March 1st of each year if they

18 used any newsprint the previous year. Through the years

19 of this program, there has been a large percentage of

20 newsprint consumers who filed their certification forms

21 late. For example, nearly half of those filed last year

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22 for 1997 were filed late, 42 percent. And because of
23 that, the Board, in August of '98, had asked us to start a
24 regulation program to implement changes some within the
25 penalty structures.

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1 Should the Board approve the proposed
2 regulations that we are putting forward today, the penalty
3 structure will be changing from \$1,000 per public hearing
4 that the Board has to put on to \$500 per penalty fee for
5 the 45 to 90 days late, and \$1,000 penalty assessed on
6 those who are 90 or more days late, and that would be
7 issued by the Executive Director.

8 The proposed regulations would be in place
9 for the 1999 newsprint certification year, and we are
10 hoping that staff -- I'm sorry. It's very late and I'm
11 very tired too. Staff recommends that the Board approve
12 Resolution 1999-404 and adopt the proposed regulations.

13 BOARD MEMBER PENNINGTON: Mr. Chairman.

14 CHAIRMAN EATON: Mr. Pennington.

15 BOARD MEMBER PENNINGTON: First I need to
16 say that I'm a member of the California Newspaper
17 Publishers's Association, but I've checked with legal
18 counsel and I have no conflict of interest on this.

19 Second, I would say that I had some
20 concerns about it from the standpoint that \$500 or a
21 \$1,000 to a small newspaper can be a substantial fine,

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22 where to a newspaper like the Los Angeles Times, it's not

23 much at all. I did talk with Tom Newton at the CNPA and

24 as well as talked to his staff, and I'm satisfied that

25 what they have done is correct and acceptable to not only

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1 the industry, but their trade association.

2 So therefore, I'd like to move adoption of

3 Resolution 1999-404.

4 BOARD MEMBER JONES: I'll second.

5 CHAIRMAN EATON: Mr. Pennington moves and

6 Mr. Jones seconds we adopt Resolution 1999-404.

7 Madam Secretary, please call the roll.

8 BOARD SECRETARY: Board Member Jones.

9 BOARD MEMBER JONES: Aye.

10 BOARD SECRETARY: Moulton-Patterson.

11 BOARD MEMBER MOULTON-PATTERSON: Aye.

12 BOARD SECRETARY: Pennington.

13 BOARD MEMBER ROBERTI: Aye.

14 BOARD SECRETARY: Chairman Eaton.

15 CHAIRMAN EATON: Aye.

16 Thank you very much. I believe that

17 completes all of the items.

18 Anyone needing public comment? Hearing

19 none, this meeting stands adjourned.

20 * * *

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1 STATE OF CALIFORNIA

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3 I, Terri L. Emery, CSR 11598, a Certified
4 Shorthand Reporter in and for the State of California, do
5 hereby certify:

6 That the foregoing proceedings were taken
7 down by me in shorthand at the time and place named
8 therein and was thereafter transcribed under my
9 supervision; that this transcript contains a full, true
10 and correct record of the proceedings which took place at
11 the time and place set forth in the caption hereto.

12

13

14 I further certify that I have no interest
15 in the event of the action.

16

17

18 EXECUTED this 5th day of November, 1999.

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Terri L. Emery

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